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ABSTRACT

In October 1970, the commission published its first of three across-the-board evaluations of the Federal Government's effort to end discrimination against American minorities. In February 1972 the commission chairman and the director of the Office of Management and Budget (OMB) agreed that the commission would provide OMB with a summary of Federal civil rights activites, highlighting progress and citing deficiencies in enforcement programs. The commission's staff director in September 1972 provided the OMB director with a report covering the activities of more than 25 Federal agencies and departments with significant civil rights responsibilities. The commission herewith publishes the document sent to OMB. Minor editing has been performed, but no substantive changes have been made in the report as delivered to OMB. This report was prepared in the same manner as other commission studies of the Federal enforcement effort. Detailed questionnaires were mailed to the agencies in July, interviews were held with Washington-based civil rights and program officials in July and August, and documents and data supplied by the agencies were analyzed. The report covers the activities of the agencies from October 1971 to July 1972. Sex discrimination is not covered in this report, it is stated, as the commission's jurisdiction did not include sex discrimination at the time of the report. (Author/JM)

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The Federal Civil Rights Enforcement Effort --A REASSESSMENT

A Report of
The United States
Commission on
Civil Rights

January 1973

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U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

Investigate complaints alleging that citizens are being deprived of their rights to vote by reason of their race, color, religion, or national origin, or by reason of fraudulent practices;

Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution;

Appraise Federal laws and policies with respect to equal protection of the laws;

Serve as a national clearinghouse for information in respect to denials of equal protection of the laws; and

Submit reports, findings, and recommendations to the President and the Congress.

Members of the Commission:*

Stephen Horn, *Vice Chairman*
Frankie M. Freeman
Maurice B. Mitchell
Robert S. Rankin
Manuel Ruiz, Jr.

John A. Buggs, *Staff Director*

*Rev. Theodore M. Hesburgh, C.S.C., was Chairman of the Commission until his resignation on November 17, 1972.

LETTER OF TRANSMITTAL

January 1973

THE PRESIDENT
THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

SIRS:

The U.S. Commission on Civil Rights presents this report to you pursuant to Public Law 85-315, as amended.

This report evaluates the Federal effort to end discrimination against this Nation's minority citizens. It is the third in a series of follow-up reports to a September 1970 study of the Federal civil rights enforcement effort. These reports have been aimed at determining how effectively the Federal Government is carrying out its civil rights responsibilities pursuant to the various laws, regulations, Executive orders, and policies.

While we have described the civil rights operations of individual agencies, our purpose is to evaluate the structure and mechanisms for civil rights enforcement of the Federal Government as a whole—to identify those problems which are systemic to Federal activities and to determine means for improving the civil rights efforts of all Federal departments and agencies.

Our findings in this report show that the distressing picture described in past reports has not substantially changed. Our basic conclusion continues to be that the Federal effort is highly inadequate. As we have noted earlier, agency civil rights offices lack sufficient staff and authority to execute their full responsibilities. Civil rights enforcement continues to be complaint oriented; there is little systematic effort to search for and eliminate discrimination in all areas under Federal jurisdiction. Further, even when discrimination is disclosed, negotiations to achieve compliance are often ineffective. Yet, Federal agencies rarely resort to imposing sanctions.

If such findings are not to be repeated year after year, in agency after agency, it is imperative that immediate steps be taken toward vigorous enforcement of the civil rights requirements. Therefore, we urge your consideration of the facts presented and ask for your leadership in ensuring forceful implementation of the Federal civil rights program.

Respectfully,

Stephen Horn, Vice Chairman
Frankie M. Freeman
Maurice B. Mitchell
Robert S. Rankin
Manuel Ruiz, Jr.

John A. Buggs, Staff Director

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STATEMENT OF THE UNITED STATES COMMISSION ON CIVIL RIGHTS ON "THE FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT—A REASSESSMENT"

More than two years ago this Commission issued the first in a series of reports evaluating the structure and mechanisms of the Federal civil rights enforcement effort. We undertook these studies because while there was an impressive array of Federal civil rights laws, Executive orders, and policies, the promise of equal justice for all Americans had not approached reality. We felt that the Federal Government was the single institution in our society possessing the legal authority, the resources, and—potentially, at least—the will for attacking social and economic injustice on a comprehensive scale.

In that report the Commission identified weaknesses in civil rights enforcement which continue to permit such grievous wrongs as segregation in our schools, discriminatory housing and employment, disproportionate hardship to minorities in urban development and highway construction, and inequitable distribution of health services and other Federal benefits.

Today we are releasing a third followup report, which was submitted last September to the Office of Management and Budget for its use in reviewing budget submissions of the Federal agencies. Our basic conclusions are that the Federal effort is highly inadequate; that it has not improved as much as we would have expected since our last report in November 1971; and that strong leadership and direction are absolutely necessary to prevent a continuation of the ineffective enforcement program developed over the last 9 years. We issue this report in the hope that our findings will be studied by the President, his agency heads, the Congress, and the American people and that strong remedial action will be promptly undertaken.

Our findings are dismayingly similar to those in our earlier reports. The basic finding of our initial report, issued in October 1970, was that executive branch enforcement of civil rights mandates was so inadequate as to render the laws practically meaningless. Many deficiencies ran throughout the overall effort. We found, for example, that the size of the staff with full-time equal opportunity responsibilities was insufficient. At the same time, because of their low position in their organizational hierarchy, civil rights officials lacked authority to bring about change in the substantive programs conducted by their agencies. Moreover, it became abundantly clear that agency civil rights enforcement efforts typically were disjointed and marked by a lack of comprehensive planning and goals. Agencies failed to search out patterns of bias, preferring instead to respond to individual complaints. Even where noncompliance was plainly substantiated, protracted negotiations were commonplace and sanctions were rare. Finally, we found a lack of Government-wide coordination of civil rights efforts.

This deplorable situation did not develop accidentally. Nor was the Commission's finding a surprise to those knowledgeable about civil rights and the role of the Federal Government. The enforcement failure was the result, to a large extent, of placing the responsibility for ensuring racial and ethnic justice upon a massive Federal bureaucracy which for years had been an integral part of a discriminatory system. Not only did the bureaucrats resist civil rights goals; they often viewed any meaningful effort to pursue them to be against their particular program's self-interest.

Many agency officials genuinely believed they would incur the wrath of powerful members of Congress or lobbyists—and thereby jeopardize their other programs—if they actively attended to civil rights concerns. Moreover, since nonenforcement was an accepted mode of behavior, any official who sought to enforce civil rights laws with the same zeal applied to other statutes ran the risk of being branded as an activist, a visionary, or a troublemaker. Regrettably, there were few countervailing pressures. Minorities still lacked the economic and political power to influence or motivate a reticent officialdom.

In spite of these inherent difficulties, we knew that Government employees respond to direct orders. We were convinced that if our Presidents and their agency head and subcabinet level appointees had persisted in making clear that the civil rights laws were to be strictly enforced, and had disciplined those who did not follow directives and praised those who did, racial and ethnic inequality would not have been as prevalent as it was in 1970. Leadership—presidential, political, and administrative—and the development of realistic management processes are the keystones to a vigorous and effective Federal enforcement effort. Our study concluded that this leadership unfortunately was lacking. Despite certain halting steps forward and a few promising public pronouncements, Presidents and their appointees seldom assumed their potential role as directors of the Government's efforts to protect the rights of minority Americans.

The Commission's two followup reports, issued in May and November 1971, found that some agencies had made some progress in improving their civil rights structures and mechanisms. Important action had been taken by such agencies as the Office of Management and Budget and the Department of Housing and Urban Development. But other agencies—such as the Federal Power Commission, the Department of the Interior, and the Law Enforcement Assistance Administration of the Department of Justice—had made almost no headway in developing the tools necessary to combat discrimination.

In this, our most recent assessment, we have found that the inertia of agencies in the area of civil rights has persisted. In no agency did we find enforcement being accorded the priority and high-level commitment that is essential if civil rights programs are to become fully effective. Significant agency actions frequently are accompanied by extensive delays—in the issuance of regulations, in the implementation of regulations, and, greatest of all, in the use of sanctions when discrimination is found. Innovative steps occur here and there, but they are uncoordinated with those of other agencies. For example, the Department of Housing and Urban Development and the General Services Administration have issued regulations implementing their 1971 agreement to assure availability of housing for lower income families, open without discrimination, in any area in which a Federal installation is to be located. Neither agency, however, has undertaken the responsibility of devising an overall plan to see that every Federal agency assigns a high priority to this effort.

There is no Government-wide plan for civil rights enforcement. There is not even effective coordination among agencies with similar responsibilities in, for example, the employment area, where the Civil Service Commission, the Equal Employment Opportunity Commission, and the Office of Federal Contract Compliance share enforcement duties. The Equal Employment Opportunity Coordinating Council, created by Congress in March 1972 for this precise purpose, had not addressed any substantive issues in the first six months of its existence.

There have been some noteworthy actions, and the agencies which have instituted new and more effective compliance procedures should be duly recognized. For example, the Department of Housing and Urban Development has issued regulations requiring builders and developers, prior to the approval of HUD assistance, to demonstrate that they have undertaken positive actions to sell or rent to minorities. The Department of Health, Education, and Welfare performs special studies in the health and social services area, apart from its normal program of onsite civil rights reviews. These studies have examined such issues as language barriers to the delivery of services to non-English-speaking minorities. The Department of Agriculture's Office of Equal Opportunity has been involved in extensive upgrading of its enforcement mechanism. This includes a system whereby the Department's constituent agencies are required to set goals for minority participation in their programs. The Environmental Protection Agency, although a relatively new agency, has demonstrated energy and creativity in its efforts to enforce the provisions of Title VI of the Civil Rights Act of 1964 prohibiting discrimination in the distribution of Federal assistance. The Civil Service Commission, working with the language of an Executive order which Congress now has enacted into law, has begun to enlarge its equal opportunity staff and change its procedures.

For every step forward, however, numerous cases of inaction can be cited. The Department of the Interior has begun to conduct onsite reviews of the State and local park systems it funds, but it has not yet developed a comprehensive compliance program. It has not, for example, provided adequate guidance to these park systems concerning actions prohibited by Title VI. The Federal Power Commission still refuses to assume jurisdiction over the employment practices of its regulatees, despite a Justice Department opinion that it has authority to do so. The Interstate Commerce Commission has delayed a decision on the very same point for over 18 months.

The Federal financial regulatory agencies have not begun to collect racial and ethnic data. Neither have they made the necessary effort to use the traditional examination process to detect discriminatory lending practices barred by Title VIII of the Civil Rights Act of 1968. The Office of Federal Contract Compliance has been downgraded within the Department of Labor and its effectiveness has commensurately diminished. The Internal Revenue Service continues to construe in an unjustifiably narrow manner its duty to keep discriminatorily operated private schools from receiving tax-exempt status. Its school reviews have been perfunctory, and its cooperation with the Department of Health, Education, and Welfare is almost nonexistent.

A year ago we noted some encouraging signs in the Department of Justice's coordination of the Title VI programs of the various Federal agencies. Now the Department's activities again have become lethargic. Evidence of this is the fact that proposed uniform amendments to agency Title VI regulations have not been issued more than five years after the need was recognized by Department officials.

Even among those agencies where we found improvements, serious problems persist. Some agencies still do not adequately review the recipients of their assistance. The Department of Housing and Urban Development, for example, conducted only 186 reviews of the 12,000 agencies it funded during Fiscal Year 1972. HUD has yet to set priorities for scheduling reviews. Even when reviews are conducted, there is reason to believe that they are often superficial. The Department of Agriculture reports that it reviewed more than 24,000 of its recipients last year. Yet only one instance of noncompliance was discovered—a remarkable, if not unbelievable record, considering the extensive discrimination which pervades federally funded agriculture programs.

Other agencies continue to utilize low standards. The Civil Service Commission refuses to validate its tests according to the standard used by the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance, and the Department of Justice and approved by the Supreme Court of the United States.

In one of the most important areas of national life, the provision of equal educational opportunities for our children, we now find lowered compliance standards for elementary and secondary schools and what appears to be the elimination of the threat of fund termination which has rendered the Department of Health, Education, and Welfare's enforcement program ineffective.

In the face of this dismaying picture, the Office of Management and Budget, the one Federal entity with authority over all agencies, has maintained its interest but has not accelerated its civil rights efforts in keeping with the demonstrated need. Execution of OMB's civil rights responsibilities is left largely to the discretion of individual staff members. OMB has not established a full-time and adequately staffed civil rights unit with responsibility for interagency policymaking and monitoring. No one has been charged by the Director of OMB with the specific duty of holding the staff accountable for identifying and fulfilling the civil rights aspects of their assignments. The total potential of the budget and management review process for civil rights evaluation thus has not been realized.

This latest Commission study has reinforced the finding of the three preceding reports that the Government's civil rights program is not adequate or even close to it. This matter is of critical importance to the Nation's well-being, for we are not dealing with abstract rights but with the fundamental rights of all people—a decent job, an adequate place to live, and a suitable education. Everyone must have the opportunity to share fully in the bounty of our society—not as stepchildren or wards of the Government but as dignified citizens of this, the greatest Nation on earth.

The Federal Government's constitutional and moral obligations are clear. The long-term stability of this Nation demands an end to discrimination in its institutional forms, as well as in its overt individual manifestations. Yet large-scale discrimination continues.

Our faith in the ability of even our imperfect democratic society to live up to its commitments when challenged to do so gives us hope that the future will be less bleak than are the past and present.

That challenge can only come from the aggressive leadership by those in government at all levels who have taken a solemn vow to uphold the Constitution. Historically, the Presidency has been a major focal point through which the power of the Nation as well as its conscience have been expressed.

If our hope for lasting peace among the nations of the world requires a rapprochement with those nations from which we have been estranged, then our hope for domestic tranquility within our diverse populations requires no less. Presidential leadership has brought us far along the road toward the accomplishment of international understanding, cooperation and friendship with many of our hitherto implacable enemies. For this the Nation should be grateful. Presidential leadership has not yet been brought equally to bear on the creation of a similar situation within the Nation. Without the leadership of the President, this job not only becomes infinitely more difficult but a steady erosion of the progress toward equal rights, equal justice, and equal protection under the Constitution will occur. History suggests that so long as one man is not free, the freedom of all is in jeopardy.

The first requirement of any such effort on the part of the Chief Executive and his appointees is that of an unequivocal, forceful implementation of all the civil rights laws now on the books.

In the past the Government's vast resources frequently have been effectively marshaled to cope with natural disasters, economic instability, and outbreaks of crime. Can we afford to do less when dealing with this country's greatest malignancy—racial and ethnic injustice?

The answer is clearly "no." But days pass into weeks, then into months, and finally into years, and Federal civil rights enforcement proceeds at a snail's pace. It lacks creativity, resources, a sense of urgency, a firmness in dealing with violators, and—most importantly—a sense of commitment. Time is running out on the dream of our forebears.

While we do not feel that our efforts have thus far produced significant results, this Commission remains committed to reviewing periodically the civil rights enforcement activities of the Federal agencies. We are aware that there now are a number of new agency heads and that some steps have been taken in the six-month period since we completed this review. We intend, therefore, to complete another evaluation of the Government's efforts in six months.

But our activities in this field cannot begin to meet the need. Private groups and individuals must become more involved in monitoring the Federal Government's activities. This involvement may well lead, as it has in the past, to judicial and administrative proceedings seeking relief where Federal activities have been weak or ineffective. Such involvement most certainly leads to a more informed citizenry and a more responsive bureaucracy.

Every citizen has a right to expect that his or her Government will rededicate itself to the principle of equality and an effective program of enforcement to support that commitment. Without that commitment, this Nation will not keep faith with the clear mandate of the Constitution.

PREFACE

In October 1970 the Commission published its first across-the-board evaluation of the Federal Government's effort to end discrimination against American minorities. That report, *The Federal Civil Rights Enforcement Effort*, was followed by two reports, the first in May 1971 and the other in November 1971, which summarized the civil rights steps taken by the Government since the original report.

In the course of these studies the Commission learned a great deal about the problems besetting the various agencies in their attempts to fulfill thier responsibilities under the civil rights acts, relevant Executive orders, and court decisions. It was, therefore, entirely fitting that in February 1972 Reverend Theodore M. Hesburgh, then Commission Chairman, and George P. Shultz, then Director of the Office of Management and Budget (OMB), agreed that the Commission would provide OMB with a summary of Federal civil rights activities, highlighting progress and citing deficiencies in enforcement programs. The Commission evaluations were to be given to budget examiners prior to the submission of agency budget requests in September, so that the examiners would be fully prepared to ask appropriate questions and make recommendations in the course of the budget process. This action by the Commission was consistent with its conviction, expressed in the *Enforcement Effort* reports, that active OMB leadership in the Federal civil rights enforcement effort is essential to the success of that effort.

Pursuant to the agreement with OMB, the Commission's Staff Director in September 1972 provided the OMB Director with a report covering the activities of more than 25 Federal agencies and departments with significant civil rights responsibilities. In the belief that its reports should be made public, the Commission herewith publishes the document sent to OMB. Minor editing has been performed, but no substantive changes have been made in the report as delivered to OMB.

This report was prepared in the same manner as other Commission studies of the Federal enforcement effort. Detailed questionnaires were mailed to the agencies in July, interviews were held with Washington-based civil rights and program officials in July and August, and documents and data supplied by the agencies were analyzed. The report covers the activities of the agencies from October 1971 to July 1972.

All of the agencies dealt with at length in the *One Year Later* report were reviewed in this document, with one notable exception: the White House. The reason for the ommission is that the Commission prepared this report to assist OMB in its role as overseer of the Federal budget. Since OMB does not have the same authority and control over the White House budget that it has over budgets of the Federal departments and agencies, we did not feel that it would be useful to review the White House in this report.

Another area not covered is the Government's efforts to end discrimination based on sex. The Commission's jurisdiction was expanded to include sex discrimination in October 1972, one month after the report was completed. Information on sex discrimination will be an integral part of all subsequent Commission *Enforcement Effort* reports.

The Commission currently is conducting another review of Federal civil rights programs. A report based on this information will be published in the autumn of 1973. It will include an assessment of the agencies discussed in this report, as well as a review of the activities of other agencies such as the Small Business Administration, the Community Relations Service of the Department of Justice, and the White House. In addition, that report will be the first of the Commission's overall reviews of the Federal Government's civil rights activities to evaluate efforts at the regional level. The Commission intends to continue issuing this series of enforcement reports until it finds the Federal efforts totally satisfactory.

OFFICE OF MANAGEMENT AND BUDGET (OMB)

I. OVERVIEW

OMB has made progress in institutionalizing its civil rights program. Semiannual memoranda calling attention to the program are issued. Additional features of the program include Spring Previews and Fall Director's Reviews on civil rights issues, the *Special Analysis of Federal Civil Rights Activities*, and civil rights information sessions.

Nonetheless, there are several major weaknesses in the implementation of the program. The budget process and OMB management reviews offer a potential for civil rights evaluation that has not been fully realized. OMB has made minimal use of its legislative review procedures to foster Federal civil rights enforcement. And despite its responsibility for regulating Federal statistics, OMB has not set the requirements necessary for collection and use of racial and ethnic data on participation in Federal programs.

OMB has undertaken many *ad hoc* and worthwhile activities which have served to increase the involvement of OMB staff members in its civil rights efforts. There are, however, no adequate mechanisms making OMB staff accountable for carrying out, or even identifying, the civil rights aspects of their assignments. Consequently, civil rights activities continue to be largely discretionary to the staff member involved. Increased training and guidance of both the management and budget divisions are necessary before OMB can make good its intention of seeing that civil rights considerations permeate all its activities.

OMB has failed to take the most important step in establishing an effective civil rights program. It has not created a civil rights unit with adequate authority for monitoring and giving direction to all its civil rights activities.

II. PROGRAM AND CIVIL RIGHTS RESPONSIBILITIES

OMB's fiscal, legislative, and statistical duties endow it with significant influence in determining the staffing, structure, and policy development of civil rights programs in the Federal agencies. Although there is no specific statute assigning civil rights enforcement responsibilities to OMB, [1] its role in the oversight and evaluation of Federal activities gives OMB a unique obligation to monitor the implementation of Federal civil rights laws and policy. Since the fall of 1970, OMB has continued to delineate its civil rights functions in semiannual memoranda, assigning responsibility for exercising these functions to management and budget staff.

III. CIVIL RIGHTS ACTIVITIES

A. Budget Examination

Civil rights enforcement is not an itemized program or activity in most agency budgets,[2] and until 1970 the review of agency budgets placed little emphasis on assessing this activity. During the past two years, largely as a result of OMB directives [3] and the efforts of staff members in the Civil Rights Unit, there has been a gradual increase in the inclusion of civil rights issues in interviews between the examiners and Federal agencies, in budget submissions, and in budget hearings. In addition, some OMB examiners have been involved in special studies of agency civil rights programs. Two examples are the current evaluation of agency Title VI programs [4] and the recent review of the Office of Federal Contract Compliance.

Nonetheless, only a small portion of OMB examiners has actively pursued civil rights issues with the agencies they examine,[5] and there are still far too many instances in which significant problems go unnoticed. Despite publicity on OMB's use of the budget process for inquiry into agency civil rights activities, some agency civil rights officials feel that OMB has not been energetic in this regard.[6] On the whole, when examiners formulate recommendations for agency manpower and funding, they have not adequately identified agency civil right problems which are unresolved at the program level, and top OMB officials remain uninformed about the extent of discrimination in Federal programs.[7]

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[1] Executive Order 11541 of July 1, 1970, directs OMB to help the President bring about more efficient and economical conduct of Government, and to plan, conduct, and promote evaluation efforts to assist the President in assessing program objectives, performance, and efficiency.

[2] In the *Budget of the United States* each congressional appropriation is broken down by activity, such as research, planning, or technical assistance. In most agencies civil rights efforts are not funded by a separate appropriation and are not listed as a separate activity.

[3] The most comprehensive was issued in October 1971. It provided detailed guidelines for the analysis of agency civil rights activities. For the coming fall budget season OMB plans a further memorandum, which is scheduled to include a checklist of items for civil rights review. It should have been issued well in advance of agency budget submissions in September.

[4] The survey form focused on the easily quantifiable aspects of agency Title VI programs, such as number of complaints received and number of compliance reviews conducted. It was not adequate for reviewing agency civil rights structure nor assessing the quality of compliance reviews and complaint investigations. It would be difficult to identify major civil rights enforcement problems on the basis of this study.

Obstacles facing examiners in this regard include pressures from other priorities, lack of encouragement from supervisors, and incomplete understanding of the particular civil rights enforcement problems facing their agencies. The most serious problem, by far, however, is the fact that examiners still consider procedures for civil rights review *ad hoc* and discretionary.[8]

To systematize these procedures, OMB should require, for the budget examination process, that each agency review its civil rights jurisdiction, giving close attention to the relationship between civil rights enforcement and its assistance programs. Each agency should be required to set long-range goals for civil rights enforcement. Examiners should assess the adequacy of agency objectives and make certain that agencies have instituted effective mechanisms for accomplishing their goals. They should regularly review enforcement programs to see if agencies are obtaining the desired results.[9]

At present, examiners are not required to provide their supervisor or the Civil Rights Unit with a list of issues they plan to review or with a status report on their progress.[10] OMB contends that such close supervision would be contrary to its present budget examination procedures and it does not intend to formalize the process. The result is doubt among OMB staff and other Federal officials that OMB is committed to significantly strengthening the Federal civil rights enforcement effort.

B. Director's Review of Civil Rights

An in-depth review of selected civil rights issues occurs in the Fall Director's Review and Spring Preview.[11] The purpose of these reviews is to bring to the attention of the President policy issues which have arisen in the budgetary and management operations of the executive branch. Matters selected for these reviews, however, are so remote from the process of examining agency budgets that OMB staff frequently regard the reviews as useless in dealing with particular civil rights issues confronting the agencies.[12] The situation might be improved if the Civil Rights Unit were required to review with the examiners the unresolved issues of specific agencies in order to identify the most significant Government-wide problems. These problems then could be brought to the attention of top OMB officials.

C. Special Analysis of Federal Civil Rights Activity

In the 1973 *Budget,* OMB published the first *Special Analysis of Federal Civil Rights Activities.* Essentially, the *Analysis* provided data on Federal expenditures for civil rights enforcement and for assistance programs designated specifically for minorities. One of the *Analysis'* major shortcomings was that it did not display data throughout on the need for civil rights activity and the results achieved.[13]

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[5] Although OMB directives are intended for all budget examiners, in the absence of specific accountability an informal system has evolved in most budget divisions. The principal civil rights role is given to an examiner whose assignment includes review of a major agency civil rights office. While in some instances these examiners expand civil rights interest and involvement within their division, this informal system often curtails the civil rights enforcement activities of the other staff, who believe that the division's responsibilities have been met. OMB should clarify the role of all examiners and spell out the role of any examiners who are to provide civil rights guidance and leadership.

[6] Some agency officials have taken note of the exceptional efforts of particular budget examiners but express the opinion that these efforts will remain ineffectual unless top OMB officals provide further support to these examiners. For example, OMB has not firmly supported the use of goals and timetables as a tool for civil rights enforcement. It has not placed pressure on agencies to conduct compliance reviews of all recipients. It has not required the collection of racial and ethnic data.

[7] When unresolved civil rights problems are identified to top OMB officials, OMB can request agency heads to eliminate and resolve those problems. As a final resort, OMB might restrict agency funds or expenditures.

[8] The shortcomings of this system are illustrated by the lack of response to a memorandum issued by OMB's Civil Rights Unit this past spring. The memorandum requested from examiners a list of topics to be covered in the forthcoming season. Only five or so examiners responded to the request, and OMB did not follow up on this lack of response.

[9] Examiners also should be required to assess, on a regular basis, the minority employment patterns of Federal agencies. They should review agency data; evaluate adequacy of agency goals and timetables for increasing minority employment; and, along with Civil Service Commission officials, ensure that appropriate corrective steps are taken.

[10] A closer liaison with the Civil Rights Unit is maintained in the execution of special projects, such as the Title VI survey. This liaison has been successful in stimulating the review of agency civil rights activity.

[11] These are formal reviews in which OMB staff presents papers on critical issues for consideration by the senior decisionmaking staff. The Director's Review occurs as part of the budget examination process. The Spring Preview occurs in conjunction with identification of significant issues in the upcoming budget season.

[12] Within a given agency the magnitude of some issues—such as inadequate compliance review mechanisms or insufficient minority-directed publicity concerning program benefits—may not seem significant enough to bring to the attention of OMB officials.

[13] For example, although the *Special Analysis* provides data on the amount of money allotted for minority higher education assistance, there has been no calculation of the need for such assistance, and thus the sufficiency of Federal efforts cannot be evaluated. To illustrate further, the *Special Analysis* provides data on the number of contract compliance reviews conducted and the number of private employment complaints

D. Circular A-11

Circular A–11, which outlines the procedure for submitting agency budgets, has been revised to include a request that civil rights enforcement and minority assistance programs submit narrative, budgetary, and beneficiary data for the next *Special Analysis of Federal Civil Rights Activities*. This is an improvement over the bulletin issued in December 1971, which called for data for the first civil rights *Special Analysis*, in that it asks agency officials to submit indicators of achievement[14] and data on the number of beneficiaries by race and ethnic origin.

However, the request makes beneficiary data optional and thus will not necessarily motivate Federal agencies to collect it. Further, OMB staff members believe that the quality of the data may prove to be questionable, and they anticipate that OMB may not be able to invest adequate time to thoroughly review each data source.

OMB has not used Circular A–11 to increase the civil rights data available for the budget examination process. Since the recent revision is limited to a request for data which will be used in the *Special Analysis*, the data will not be submitted to OMB until after the budget hearings.[15] The Circular has not been amended to require that program plans submitted in an agency's budget include data on the race and ethnic origin of expected program participants. Nor has it been amended to require that narrative descriptions of agency programs contain statements concerning the effect of the programs on minorities.[16]

E. Racial and Ethnic Data

As previously noted, Circular A–11 limits the request for minority beneficiary data to civil rights enforcement and minority assistance programs.[17] As a result of the recommendations of its task force on racial and ethnic data,[18] OMB has recently requested agencies to submit data on the racial and ethnic origin of potential beneficiaries, applicants, beneficiaries, and persons negatively affected by Federal programs. If available, these data might be used in the budget review process. OMB officials feel, however, that such data are not generally collected by Federal agencies and that this request will serve primarily as the basis for further study for improving collection of racial and ethnic data. So far, OMB is planning a one-time request for these data. Thus, the analysis of racial and ethnic program data will not yet be routinely incorporated into the budget review process.

OMB also has studied the possibility of revising the specifications for racial and ethnic categories used in Federal statistics. In February 1972 it solicited comments from Federal agencies and minority group organizations concerning proposed revisions in Circular A–46.[19] The categories currently used by Federal agencies, as well as desired categories, were so diverse that OMB believed it impossible to reach a consensus.[20] OMB has taken no further action.

OMB continues to provide inadequate guidelines for the collection of racial and ethnic data, and the opportunity for uniformity is thus reduced.[21] Under the Federal Reports Act of 1942, OMB is responsible for examining the informational needs of Federal agencies and coordinating information-collection services. Further, the Budget and Accounting Procedures Act of 1950 requires OMB to "develop programs and issue regulations and orders for the improved gathering, compiling, analyzing, publishing and disseminating of statistical information for any purpose by . . . (Federal agencies)." In light of the great need for racial and ethnic statistics on beneficiaries of Federal programs and the significant inconsistencies and deficiencies in the small amount of data collected, OMB should impose requirements upon Federal agencies for improved and uniform racial and ethnic data collection and use.

Although OMB's task force on racial and ethnic data was established well over a year ago, OMB has not yet made any requirement upon Federal agencies

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investigated. It does not provide information on the total number of contracts held or the number of complaints received. It provides no data on the outcomes of the compliance reviews or complaint investigations.

[14] In Circular A-11, OMB provides two examples of such indicators: change in beneficiary composition and establishment of outreach facilities in areas of minority concentration.

[15] OMB notes that final decisions concerning allocation of resources are not made until after agency budget hearings. Accurate data on the funding of civil rights or any other agency programs are not available until those decisions are made.

[16] The primary purpose of Circular A-11 is to set forth the requirements for the budgetary and narrative statements with regard to programs scheduled for the coming fiscal year. Nonetheless, A-11 does not include a requirement that for each program outlined for the next fiscal year the agency state: (a) the effect of the program upon minority beneficiaries; (b) that a maximum effort will be made to reach minority beneficiaries; and (c) that plans have been made to remedy any deficiencies in the program delivery system.

[17] Circular A-11 does not require the submission of minority group data for Federal assistance programs in general.

[18] This task force was established in mid-1971 to consider the means of improving the collection and use of racial and ethnic data by Federal agencies and to study the feasibility of an OMB requirement for such data collection.

[19] Exhibit K to Circular A-46 sets standards for the Federal collection of minority group statistics.

[20] In addition to considering the value of such data to Federal agencies before standardizing data collection, OMB is also assessing the costs to Federal agencies of revising existing data collection systems. In some cases, the cost of revising categories to meet the minimum needs for civil rights enforcement and program administration appeared to OMB to be prohibitive.

[21] This is particularly serious because many Federal agencies are increasing the collection and use of racial and ethnic data. Once their data collection systems have become final, it will be more difficult to correct deviations from a Federal standard.

for data collection or improvement of existing data systems. Task force efforts have concentrated upon precision and reliability, losing sight of the fact that racial and ethnic data in many instances is needed primarily to highlight gross inequities. In short, OMB has allowed technical difficulties that are comparatively minor to overshadow the agencies' need to know the race and ethnic origin of their beneficiaries.

F. The Performance Management System (PMS)

The Performance Management System was developed by OMB in 1971 to improve Federal management processes. Under the system, performance goals are set and results are measured quarterly and compared with actual resources used.

To date, the Performance Management System has been extended to only one agency with major civil rights enforcement responsibilities, the Equal Employment Opportunity Commission (EEOC); only one subagency with primary responsibility for serving minorities, the Office of Minority Business Enterprise (OMBE); and only one Federal assistance program which serves a large number of minority beneficiaries, the Food and Nutrition Service (FNS) of the Department of Agriculture (USDA).[22] There are no definite plans for expanding the system.[23]

Civil rights input into the implementation of PMS has been inadequate. For example, when PMS was initiated for the Food and Nutrition Service, USDA equal opportunity staff was not included in the initial meetings between FNS and OMB. As a result, performance goals give only minimal attention to minority beneficiaries.[24]

Since the system is still in the definitional stages for OMBE, EEOC, and FNS, it is too early to comment upon its efficacy. In fact, PMS implementation has been so slow that it is not reasonable to expect that the system will cover more than a few more programs in the next several years. It is no longer realistic, therefore, to believe that PMS can be relied upon to promote awareness of the civil rights responsibilities of program managers[25] throughout the Federal Government.

Despite this shortcoming, we know of no other steps by OMB to require, or even encourage, program managers to set goals and timetables for improving service to minority beneficiaries. In fact, OMB has not yet taken the initial step of publicly endorsing the use of goals and timetables to promote equitable distribution of program benefits.

G. Legislative Review

OMB's legislative responsibilities[26] afford it a unique opportunity for seeing that agency legislative programs—and all other legislation it must clear—give adequate consideration to their effect upon minorities.[27] Procedures for legislative clearance are outlined in Circular A-19. In July 1971, OMB attached to this Circular a transmittal memorandum which contained a provision for reviewing civil rights implications of proposed legislation.[28]

The effect of this memorandum on the legislative clearance process has been minimal. OMB has not prodded agencies for comment on the effect of proposed legislation upon minorities. OMB staff members could not recall any examples in which civil rights considerations were included in the review of substantive legislation.

In July 1972, OMB issued a revised Circular A-19, specifically directing agencies to consider certain civil rights laws in reviewing proposed legislation.[29] OMB has made no provision, however, to monitor the implementation of this Circular. Moreover, there is no requirement that agencies proposing legislation cover civil rights considerations in the justification for the proposed legislation. Neither does OMB place such a requirement upon its review. Finally, the Circular requires only a consideration of compatibility with existing laws, Executive orders, and policy. Agencies are not mandated to calculate the effect of proposed legislation upon minorities nor demonstrate that its provisions are in the interests of minorities.

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[22] This system has also been established for 18 agencies with narcotics programs and for several agencies involved in crime reduction.

[23] OMB is considering wider use of the system in the areas of equal employment opportunity and minority business enterprise, but this will depend upon available resources in Fiscal Year 1973. Only four OMB staff members are assigned full-time to the development and operation of PMS.

[24] The first stages of PMS involve a statement of program goals and objectives and the identification of measurements to be used in assessing program performance.

[25] In March 1971 Director George P. Shultz instructed that PMS be used to ensure that the achievement of civil rights goals was clearly included among the performance responsibilities of program managers. At that time, OMB anticipated that the system would be invoked for all Federal assistance programs. A few months later, staff members realized that this was too ambitious. They continued to believe, however, that the system might be applied in the near future to about 15 programs with significant impact on minorities.

[26] OMB clears agency legislative programs before they are submitted to Congress. These programs are submitted to OMB concomitantly with agency budget submissions. They include, for example, provisions for new assistance programs, statutory changes in eligibility requirements, or revisions in methods of distributing benefits. OMB also circulates, for agency comment, proposed legislation and enrolled bills, i.e., bills or resolutions passed by both Houses of Congress and presented to the President for action.

[27] When a program does not provide equitable benefits to minorities, this may be the fault of the legislation creating the program. For example, the Veterans Administration cannot take certain compensatory actions in the face of patterns of discriminatory mortgage lending. VA's direct loan program was created to provide housing loans to veterans in rural areas where private funding is unavailable. The legislation does not, however, permit direct loans to minorities in the inner-city, where funding may be equally unavailable.

[28] The transmittal memorandum instructed agencies to determine whether the legislation carries out existing civil rights law and is consistent with the Administration's civil rights policies and directives.

[29] These include Title VI of the Civil Rights Act of 1964, Titles VIII and IX of the Civil Rights Act of 1968, and Executive Orders 11246, 11478, and 11512.

H. Coordination of Federally Assisted Programs

The Organization and Management Systems (OMS) Division oversees the evaluation, review, and coordination of federally assisted programs and projects. A transmittal memorandum to Circular A-95, which guides Federal agencies in cooperating with State and local governments with regard to federally assisted programs, was issued in March 1972 and provides for consideration of civil rights implications in reviews of applications for Federal assistance.

Essentially, however, these provisions are optional. Circular A–95 does not outline any specific criteria for the review of applications and does not make the inclusion of civil rights considerations mandatory. The Circular does not require that the clearinghouses[30] adequately circulate submitted applications to civil rights organizations which might have a direct interest in the outcome.

OMS also is engaged in the development of an application form that will be uniform for all Federal assistance. It has not determined whether the application will require a statement about the impact of the proposed project upon minorities.

I. Field Coordination

OMB's oversight of the Federal Executive Boards (FEBs)[31] and the Federal Regional Councils (FRCs)[32] creates a channel for conveying Federal civil rights policies directly to agency field offices and improving service to minorities. OMB sets the themes for FEB activity.[33] Although OMB has chosen topics relating to minority business enterprise and internal equal employment opportunity, it has selected no themes having to do with the delivery of Federal assistance to minorities.[34]

The OMB staff members work with the Regional Councils to develop agendas. With OMB encouragement, individual Councils have been lending support to minority businesses and banks and have been seeking to improve equal employment opportunities in Federal service. Despite their mandate to assess the total impact of Federal activity in their regions, the Councils have not made a concerted effort to measure and improve delivery of Federal benefits to minority citizens.

While some of the Councils have promoted programs which focus on the special needs of American Indians and/or persons of Spanish speaking background, they have not evaluated these activities and thus have not provided the basis for structural changes in the program delivery system.

J. OMB Minority Employment

In late 1970, OMB indicated that it would vigorously improve its hiring practices. Minority professionals went from 11 to 38. Since October 1971, OMB has increased the number of minorities in supergrade positions from three to seven.[35] Nevertheless, the result in the last ten months has not been of such magnitude as to set an example for other Federal agencies. None of its assistant directorships has been filled with a minority person, although vacancies have occurred, and OMB has increased the number of minority professionals by only six.[36] Further, of the 655 total employees of OMB, only six are of Spanish speaking background and only one is American Indian.

Until OMB becomes a model equal opportunity employer, it will be unable to convey a serious commitment to its own staff and other Federal agencies. Until that time, too, OMB civil rights efforts will suffer from a lack of staff with the type of sensitivity that comes from directly experiencing discrimination.

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[30] OMB Circular A-95 provides an opportunity for State and local governments to comment upon certain proposed federally assisted projects through the mechanism of State, metropolitan, or regional clearinghouses. These clearinghouses are generally comprehensive planning agencies. They examine proposed projects in relation to planned areawide growth and development and circulate notification of the proposed projects to jurisdictions and agencies which might be affected by the project.

[31] FEBs are associations of top Federal executives in each of 25 cities. They were established in the early 1960's to conduct activities which create a positive image of the Federal bureaucracy.

[32] Regional Councils are composed of regional heads of the following departments and agencies: Labor; Health, Education, and Welfare; Housing and Urban Development; Transportation; Office of Economic Opportunity; Environmental Protection Agency; and the Law Enforcement Assistance Administration. As outlined in Executive Order 11647, issued in February 1972, the Councils are designed to coordinate agency action at the regional level and to eliminate duplication of Federal effort.

[33] A recent theme has been environment. The FEBs have been promoting action to ensure that Federal facilities are not contributing to pollution.

[34] For example, there has been no concerted activity to promote an interest in ensuring that Federal agency regulations and procedures do not discriminate against minority beneficiaries and potential beneficiaries. There has been no emphasis on such activities as providing information on program benefits in the language spoken by potential beneficiaries, employing bilingual-bicultural service workers, using photographs and pictures clearly indicating the availability of program benefits to all racial and ethnic groups, or locating offices for program delivery in areas accessible to minority neighborhoods.

[35] OMB has 75 supergrade positions. Three are filled by blacks, two by persons of Spanish speaking background, and two by Asian Americans. All of these are male.

[36] OMB has 434 employees in grades 9 through 18. Of these, only 43 are minorities. Although OMB has 179 employees in grades 15 through 18, only 12 are minorities.

IV. ORGANIZATION AND STAFFING

Central to OMB's civil rights effort is the commitment that all examiners and management staff will exercise civil rights responsibilities in the course of their regular assignments. Every staff member in OMB thus becomes a part of OMB's civil rights program. In many instances, however, this function is left to the discretion of staff members. Unless specific assignments are made, the staff frequently attaches low priority to civil rights enforcement problems.

A. Program Leadership

The Deputy Director of OMB recently has been assigned the responsibility for monitoring and coordinating the overall OMB civil rights efforts. OMB recognized that effective implementation of civil rights policy requires the attention and interest of high-level officials. The Deputy Director, however, is pressed by many other duties and lacks the time for adequate supervision of civil rights activity. His role is limited, therefore, to top-level activities,[37] and OMB's civil rights effort continues to suffer from lack of full-time leadership.

B. The Civil Rights Unit

The two staff members in the Civil Rights Unit within the General Government Programs Division (GGPD) continue to be the core of the OMB civil rights effort. They provide civil rights leadership in the budget examination process [38] and share their civil rights expertise with the management divisions.[39] They serve as staff to the civil rights committee of the Domestic Council, have participated in the activities of the Equal Employment Opportunity Coordinating Council,[40] and have engaged in a number of *ad hoc* activities.[41] Their largest single task, consuming about 30 percent of their time, continues to be budget examination of particular civil rights agencies.[42] Despite the dedicated efforts of these two staff members, the Unit remains grossly understaffed and overworked.[43]

The two staff members are responsible to the GGPD Chief and his Deputy, both of whom devote most of their time to matters unrelated to civil rights. The GGPD Chief does not report directly to the Deputy Director of OMB, and the coordinative efforts of the Civil Rights Unit thus are distant from the formulation of OMB civil rights policy.

C. Program Coordination Division (PCD)

Two PCD staff members continue to have full-time civil rights responsibilities. They participate in OMB civil rights initiatives and work closely with the civil Rights Unit. They follow up on civil rights issues identified in the field and serve as staff to the Domestic Council. They also serve as a staff on special civil rights problems to the Deputy Director. PCD is not generally responsible for providing oversight to the civil rights activities of the management divisions, although there are still many management functions for which the civil rights components have not yet been identified.[44]

D. Training

During the spring of 1972, three civil rights information sessions were held to familiarize OMB staff members with important Federal civil rights problems and to further their understanding of enforcement issues.[45] Attendance at these sessions was optional, although top OMB officials strongly encouraged each division to send a representative.[46] These formal sessions were supplemented by individual guidance provided by the Civil Rights Unit to keep examiners informed of civil rights issues relating to their agencies.

On the whole, training has been insufficient. Only 35 to 40 examiners attended each civil rights session, and informal guidance has been provided during the past year to more than 55 examiners.[47] Training has been more extensive in the examination divisions than in the management divisions, and many management staff undertakings suffer because of insufficient civil rights background.[48]

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[37] OMB should consider establishing a civil rights unit in the Director's Office with a full-time chief with sufficient authority to monitor and provide guidance to both management and budget divisions.

[38] In addition to helping examiners identify agency civil rights issues, the Unit briefs new examiners, assists examiners with program analysis, and attends budget hearings.

[39] They have participated in the civil rights development and application of the Performance Management System, the revision of OMB circulars, and a review of Federal statistics. They have collaborated in reviews with the Program Coordination Division and are responsible for clearing all forms with civil rights aspects.

[40] The Civil Rights Unit, the civil rights staff of the Program Coordination Division, and the Deputy Director of OMB have participated in the Council's activities, with OMB serving temporarily in the leadership role. The Council nevertheless has remained ineffective in its mission to coordinate agency efforts to end employment discrimination. It has held only two meetings since its establishment in March 1972—both concerned largely with Council procedures and administration.

[41] They have assisted in the development and promotion of activities of the Cabinet Committee on Opportunities for Spanish Speaking People. They have provided input into the speeches of the President and top OMB officials.

[42] OMB argues that this assignment provides invaluable experience and insight to members of the Civil Rights Unit. It limits, however, the time spent in coordinating the OMB civil rights effort and detracts from the image necessary for civil rights oversight in the budget process.

[43] OMB is currently giving consideration to increasing OMB's civil rights resources.

[44] For example, the Organization and Management Systems Division, which reviews the efficiency of Federal organisations, has not yet conducted a much needed study on the effectiveness of agency civil rights structures. This report and prior Commission reports on Federal civil rights enforcement furnish a rationale for conducting such a study with regard to particular Federal agencies. The Executive Development and Labor Relations Division is responsible for oversight of Federal employee training opportunities but has not yet assessed the adequacy of training for agency civil rights officials.

[45] The seminars were addressed by representatives of the Civil Service Commission; the Office for Civil Rights at the Department of Health, Education, and Welfare; and the Commission on Civil Rights.

[46] In addition to issuing the memoranda announcing these sessions, some top officials attended the information sessions. Most division chiefs and associate directors, however, did not.

There are many areas not covered by OMB training. For example, many examiners are uninformed about recent and pending civil rights lawsuits in their areas—information that could be important in stimulating administrative reforms. OMB staff members receive little information from minority and civil rights organizations regarding deficiencies in program delivery and civil rights enforcement. While staff members from the Civil Rights Unit and a few examiners have sought contact with such groups, OMB has not provided agencywide encouragement.[49] The Civil Rights Unit has circulated material such as this Commission's studies to appropriate examiners, but there is no system for providing outside information to examiners and other OMB staff members on a regular basis.

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[47] Some of this guidance has been extensive, involving close cooperation between the examiner and the Civil Rights Unit. This was true in the case of drafting revisions of Executive Order 11512, concerning GSA responsibilities in the relocation of Federal agencies. Because of the demands on the Civil Rights Unit, some of the contact has been perfunctory, involving little or no followup.

[48] For example, such training is essential for statistical policy staff in determining whether a proposed statistical form has civil rights implications and hence should be reviewed by the Civil Rights Unit. Staff members involved in the development of the Performance Management System need to be able to determine for which minority groups separate measurements of program delivery should be made and what deficiencies are likely to occur.

[49] Some examiners, when questioned about this, said that any contact with such groups would be highly inappropriate.

CIVIL SERVICE COMMISSION (CSC)

I. OVERVIEW

The 1972 Equal Employment Opportunity Act prompted the Civil Service Commission to be more affirmative in its dealings with Federal agencies concerning equal employment opportunity (EEO). Continuing significant disparities between minorities and nonminorities in meaningful Federal employment make clear the need for a new and assertive approach by CSC to eliminate systemic discrimination in the Federal service.

CSC's adoption of an approach more regulatory than consultative—indicated by the approval of, and not just a review of, EEO plans—is a step in the right direction. Tightening requirements for EEO plans and complaint investigation procedures is noteworthy, although improvement still is necessary in both areas.

Of major importance to the success of the EEO program are three steps: (1) that all agencies and installations adopt goals and timetables, or supply a written explanation giving significant reasons for not doing so; (2) that CSC require that action commitments in EEO plans be made specific so that they can be evaluated and so that progress in meeting the commitments can be measured; and (3) that CSC adopt a test-validation procedure similar to that used by the Equal Employment Opportunity Commission (EEOC) and sanctioned by the Supreme Court.

CSC, commendably, has more than doubled its staff carrying EEO responsibilities. It is likely, however, that additional staff will be necessary, especially in regional offices. CSC, therefore, will need to reevaluate its staffing level before the end of the fiscal year.

CSC now clearly has the power to structure and monitor agency programs and is developing the tools, including a sophisticated data retrieval system, for doing so. Results, in terms of increased minority employment in professional and policy-making positions, should be noticeable in the next year. If such proves not to be the case, a review of the reasons should be undertaken promptly and serious consideration should be given to removing the Federal equal employment opportunity program from the Civil Service Commission and placing that responsibility in an independent agency such as EEOC.

II. MINORITY FEDERAL EMPLOYMENT

The Civil Service Commission reports[1] that the number of better-paying jobs held by minority group Americans is continuing to increase.[2] Minority representation at all but the lowest grades (1–4) of the General Schedule (GS) increased between November 1970 and November 1971. These increases brought minority representation under the General Schedule and similar pay plans to 15.2 percent—up from 14.7 percent in November 1970. Minorities accounted for one-third of the net increase in General Schedule and similar employment. In a two-year period ending in November 1971, there was a 0.5 percent increase in minority employment at the grade levels 14–15 and 16–18. Similar increases have occurred at other professional grade levels.

These data show modest improvement in employment practices of Federal departments and agencies. Nevertheless, the overall picture is still one of pronounced disparate treatment. The median grade under the General Schedule for minorities is 5, while for nonminorities it is 8.7. Forty-one percent of the minority General Schedule work force is at grades 1–4, while the percentage of nonminority workers at those levels is almost one–half that percentage (22.2).[3]

At the other end of the scale, by contrast, there are continuing signs of significant underutilization of minority potential. Minorities at the highest policy levels (GS 16-18) remain below 3 percent.[4] Many agencies, including CSC, have no minorities in such positions.[5]

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[1] All data cited are taken from a CSC publication, *Minority Group Employment in the Federal Government*, Nov. 30, 1971.

[2] Minorities represent 19.5 percent of the Federal Government's civilian work force. The percentage of minority workers rose from 18.5 percent in November 1967 to 19.5 percent in November 1971. During the period November 1970-71, minority employment in the Federal Government decreased by 2,283, or 0.5 percent. In this same period, total Federal employment increased by 2,266, or 0.1 percent. The great bulk of the loss of Federal employment was in the Postal Field Service.

[3] While 28.4 percent of the Wage System jobs are held by minorities, only 15.2 percent of the more lucrative General Schedule positions are held by minorities.

[4] Less than 4 percent of the GS-15 positions are filled by minorities.

III. CIVIL RIGHTS RESPONSIBILITY

The Civil Service Commission has major responsibility for administering the Federal Government's merit system of public employment.[6] CSC also has been directed by statute and Executive orders to ensure that all persons—regardless of race, sex, religion, and national origin—have equal access to employment opportunities in the Government.

To fulfill either duty, CSC must integrate equal employment opportunity into the fabric of the Government's present personnel management system. It must do so by providing the necessary leadership and assistance to all Federal agencies. This means that EEO must be viewed as good personnel management, and not as a program with purposes diametrically opposed to the merit system.

Until this year, CSC did not play a forceful role in shaping EEO programs in Federal agencies. In the past, it issued guidelines for affirmative action plans but did not review these agency plans for formal approval or rejection. Thus, the agency plans were weak, full of generalities, and contained no statistical information for determining progress in hiring or promoting minorities. In some agencies there was, year after year, no improvement. CSC offered advice but took no remedial steps. One reason for CSC's lack of assertiveness was its contention that it lacked authority to fill anything more than a consultative role.

CSC maintains that the 1972 Equal Employment Opportunity Act provides the legislative base for broadening its leadership role and enforcement authority in EEO matters. Section 717 prohibits discrimination on the basis of race, color, religion, sex, or national origin in Federal employment and gives CSC the authority to enforce provisions of the act. Back pay is specifically established as a remedial action. An aggrieved employee or applicant for employment is authorized, upon certain conditions, to file suit in Federal court to redress a complaint.

The act authorizes CSC to issue supplementary rules, regulations, orders, and instructions. It makes CSC responsible for annual review and approval of national and regional equal employment opportunity plans,[7] which are to be filed by each agency, and for review and evaluation of the operation of agency EEO plans. Each agency is to file a report of progress in this area with CSC, and CSC is to publish the reports at least semiannually. The act specifies that the agency plans shall consist, at a minimum, of (1) provisions for a training and education program designed to offer employees maximum opportunity to advance, and (2) a description of the extent, in terms of both quantity and quality, of the resources the agency proposes to devote to its EEO program.

The new law clearly strengthens the position of CSC in terms of its relationship to other Federal Departments and Agencies. However, what it provides, with few exceptions, is nothing but an affirmation of powers CSC already possessed under the previous Executive orders [8]—powers which CSC heretofore chose to exercise in a limited manner. In any event, there can be no doubt that CSC is fully empowered to direct agency activities to end systemic discrimination and thereby signficantly increase the number of minorities in professional and policy-making positions.

IV. AFFIRMATIVE ACTION PLAN REQUIREMENTS

The Commission recently issued guidelines to heads of agencies, setting out standards for the development of Fiscal Year 1973 equal employment opportunity plans.[9] These guidelines require agencies to include in their affirmative action plans: general program administration, EEO counseling, complaint processing, EEO training, and development of standards for EEO personnel. The guidelines also discuss the use of goals and timetables, the development of action commitments and meaningful target dates, the conduct of internal evaluation, the development of affirmative recruitment activities, and the submission of annual progress reports to the Commission.

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[5] None of the Regulatory Agencies (Civil Aeronautics Board, Federal Communications Commission, Federal Power Commission, Federal Trade Commission, Interstate Commerce Commission, Securities and Exchange Commission, Federal Deposit Insurance Corporation, and Federal Home Loan Bank Board) have any minorities among their 418 GS 16-18 positions. Less than 1 percent of the 982 such positions in the Department of Defense are held by minorities. The Atomic Energy Commission and the National Aeronautics and Space Administration each have one minority person at the GS 16-18 level, out of 640 such positions. CSC, which had one minority among its 53 GS 16-18 positions in 1971, presently has none. It continues to have no minority bureau chief or regional director. There are no Spanish surnamed persons at these grade levels in such important agencies as the Departments of Agriculture, Commerce, and Treasury, and the General Services Administration. Between them, these agencies have 1,046 such jobs.

[6] Such a merit system is purported to be based on sound principles of fairness and nondiscrimination; i.e., a fair opportunity is provided for individuals to compete in a process where ability to do the job is the determinant in selection, rather than nonrelevant factors. More important, CSC contends that selecting a person for a job under the merit system means selecting from among the best qualified, rather than simply selecting one with the ability and qualifications to perform the job. There is, however, a substantial question as to whether the present system of Federal employment has operated, in fact, on the "merit principle" insofar as minority persons are concerned. The overt discrimination practiced in the Federal civil service up through the middle of this century, plus the extremely small number of minorities in policy positions despite their availability in the job market, are evidence that a system of preference has been utilized for the majority group.

[7] Previously, CSC did not formally approve or reject plans, and no regional plans were required.

[8] Actions CSC has recently taken—such as changing the requirements for affirmative action plans and developing procedures under which it can assume responsibility for a grievance filed with an agency—are congruent with the authority CSC had under Executive Order 11478.

[9] Bulletin No. 713-25, which amends Bulletin No. 713-12.

Although these guidelines represent an improvement over previous guidelines, they have numerous shortcomings. Specifically, there is a lack of concreteness in the sections on goals and timetables, upward mobility training, action commitments and target dates, and internal agency evaluation.

A. Use of Goals and Timetables

The CSC affirmative action guidelines reproduce much of the language in Chairman Hampton's May 11, 1971, memorandum on goals and timetables.[10] As we noted in *The Federal Civil Rights Enforcement Effort—One Year Later*, CSC's approach to the use of this important concept was somewhat wanting. CSC did not fully endorse the use of goals and timetables. CSC reports that 16 government agencies, employing 49 percent of the Federal work force, used goals and timetables for Fiscal Year 1972. CSC does not say whether the goals were met or whether good-faith efforts were established to meet them. In fact, no standards have been set by CSC for evaluating good-faith efforts. In view of past and present underutilization of minorities and women, it is unrealistic to expect improvement without requiring agencies to adopt immediately this important management mechanism.

Goals and timetables are the heart of an affirmative action plan for remedying underutilization of minorities and women. Goals and timetables are an agency's best estimate of the results it expects to be able to achieve through an affirmative action program designed to end systemic employment discrimination. They are a guide to determine whether the agency's affirmative action plan is working. Without goals and timetables, both agency accountability and the chances for success are reduced. Accepting agency plans without goals and timetables, as has occurred in the last year, appears to be a violation of the spirit of the Executive orders and statutes which direct CSC and the agencies to use all possible affirmative steps to end job discrimination in the Federal service.

B. Action Commitments and Target Dates

Goals and timetables, although important, are not an end in themselves. Mechanisms must be developed to achieve the goals; and if an agency's program is to be monitored, the commitments it sets out in its EEO plan must be specific and must relate directly to a deficiency in the agency's employment practices. Such, however, has not been the rule with past agency EEO plans. Action steps were often parroted from CSC instructions, and the time set for completion of the activity was equally vague.

CSC instructions on development of action commitments are vague; in fact, no more explicit than those provided in 1967.[11] Although the CSC instructions require agencies not to submit vague generalities in describing actions to be undertaken, the instructions provide no explicit information or examples outlining what CSC expects. For instance, an agency might state that one of its goals is to develop a written upward mobility plan for training employees on an organizationwide basis. In addition, the agency might set forth the goal-related objectives of upgrading clerical, technical, and professional skills, and providing special training, coaching, and work experience as needed. The agency might also designate the person responsible for seeing that goals and objectives are accomplished as a personnel manager. Finally, it might set time frames for completion of these activities as "continuous."

It can be seen that the total lack of specifics in each of the aforementioned procedures would prevent any evaluator from accurately measuring the agency's progress or the program's effectiveness. Contrast those procedures with this example of an action commitment that would reflect progress as well as program effectiveness:

> To employ 25 percent of the manpower in the personnel office and 100 percent of the EEO personnel on a full-time basis for the purpose of placing 75 percent of the secretaries who have completed a training program in research and analysis in jobs related to their new skills that allow this promotion to be accomplished by the end of the first 6 months of Fiscal Year 1973.

Such an action commitment would permit an evaluator to monitor the agency's utilization of manpower and also the placement of those trained. Since CSC does not require such specificity, agencies do not produce plans with this type of detail. As a result, most agency affirmative action plans seen by this Commission have not been meaningful.

C. Upward Mobility

An important element in eliminating discrimination in Federal employment is upward mobility for minority workers and women already hired. The success of upward mobility programs depends upon daily attention to the training of employees in the program. Even in those agencies which adopt such programs, there is a tendency to select applicants and then abandon them to their own resources.

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[10] This first CSC official comment on goals and timetables was recently reissued to agencies in connection with the President's admonition against the use of quotas. CSC, which had a difficult time in deciding whether to authorize goals and timetables, has never authorized quotas—nor does this Commission know of any instance in which they have been used by a Federal agency.

[11] Bulletin No. 7138, p. 3.

Yet CSC has made no extensive efforts to evaluate and direct the improvement of the Federal upward mobility training program, although it has taken some steps. It has, for example, undertaken an evaluation of the upward mobility programs of 63 agencies in Fiscal Year 1971,[12] and during Fiscal Year 1972 it negotiated, approved, and monitored 86 Public Service Careers agreements in 28 Federal agencies.[13]

CSC does not collect racial and ethnic data on trainees involved in upward mobility programs; it has not even requested data on the total number of individuals involved in such programs. Further, agencies have not been required to submit upward mobility plans to CSC for approval [14] or to file progress reports on implementation and effectiveness. Pursuant to the 1972 Act, CSC has directed agencies to take a number of steps. For example, agencies are to conduct occupational analyses, redesign and restructure jobs, and establish career systems to increase opportunities of lower grade employees. It appears, however, that agencies must merely identify in their EEO plans, "to the extent possible," the nature of the programs they are undertaking and the number of employees who will be trained.

D. Agency Internal Evaluation

Although CSC requires agencies to include in their EEO plans a system for monitoring and evaluating the internal operation of their EEO programs at the national and regional levels, it has not issued instructions on how often onsite reviews should be conducted, or on determining review priorities among regions or localities. The detailed guidance in *Guidelines for Agency Internal Evaluation of Equal Employment Opportunity Programs*, January 1972, directs agencies to take a problem-solution approach for evaluating EEO results. The guidelines supply a model which agencies are instructed to use in identifying alternative solutions, making decisions, setting priorities, mobilizing resources, and evaluating results. The guidelines are still somewhat too general. CSC should train agencies in the proper use of the model and/or develop examples of a model evaluation.

E. Program Administration

The most positive aspect of the amended guidelines for EEO plans—aside from the instructions on the submission of regional plans—is the requirement relating to the delineation of how the EEO program will be administered. Agencies must identify their proposed allocation of personnel and resources to carry out the program, state that adequate staff will be provided, and assure that principal officials responsible for implementing the program are fully qualified. Agencies also are instructed to assign specific responsibility and authority for program management at all levels, spell out roles and interrelationships of principal officials, and arrange for staff training and orientation in personnel administration and EEO.

The guidelines set forth a sample format for agencies to use in reporting and certifying the qualifications of principal EEO officials. The instructions indicate that qualification standards for EEO positions are being developed. Such standards would provide for uniformity in agencywide administration of the equal employment opportunity program.

V. EXAMINATION

An affirmative CSC activity regarding examinations concerns the development of work-simulation exercises for white-collar jobs. The Commission indicates that it has been successful in developing and conducting work-simulation exercises for blue-collar jobs.

However, in persisting in using the Federal Service Entrance Examination (FSEE) to measure the ability of approximately 100,000 job applicants for more than 100 Federal job classifications,[15] CSC falls short of exercising its responsibility. That the FSEE has not been properly validated to ensure that it does not discriminate against minorities is a matter that has been raised by civil rights groups and certain Federal agencies, including the Equal Employment Opportunity Commission (EEOC) and this Commission.[16] The Civil Service Commission maintains that the FSEE is fair and nondiscriminatory and that it is a relatively accurate indicator of how a person will perform on the job.[17]

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[12] The CSC reviews fell into two categories: (1) overall status of the program and its effect on the attitudes of managers, supervisors, and employees; and (2) specific actions taken or planned by agencies to implement all of the areas of the upward mobility program. "No formal reports were made to the agencies included in the survey. Instead, oral reports of findings were made to agency managers and a written summary of findings have been made to CSC program managers," according to a CSC response to a questionnaire of the Commission on Civil Rights, Aug. 9, 1972, at 39. (Hereinafter referred to as CSC response.)

[13] This was accomplished through a $3 million allocation from the Department of Labor. CSC, of course, offers a number of training programs in Washington and in its regional training centers.

[14] Agencies are, however, "encouraged to seek the assistance of the Commission in developing and implementing their programs." CSC response at 41.

[15] Basically, the FSEE measures verbal ability and quantitative reasoning.

[16] CSC reports that changes have been made in FSEE content and coverage, as part of the annual review process, and occupations for which the examination is used have been changed. In addition, factors relating applicant interests to job success are now included in a questionnaire added to the FSEE.

The fact that a test is job-related does not render the issue of cultural bias moot. Job-relatedness can be tested in a culturally biased way. Two people may describe the same object in totally different terms; yet the listener will know in each case what is being described. A test, however, may designate only one set of terms as correct and any other as incorrect. That is what is meant by bias in a test. If the correctness of the answer depends upon cultural factors associated with race or ethnicity, then the test is culturally biased.

What is important is whether the FSEE screens out qualified minority applicants. Since CSC does not keep records of the racial or ethnic identity of persons taking the FSEE, there is no way of knowing if this occurs. Further, CSC has never adopted test validation criteria which meeet the requirements used by EEOC and the Office of Federal Contract Compliance (OFCC) and endorsed by the Department of Justice and the U.S. Supreme Court.

VI. COMPLAINT PROCESSING

A major element in the Federal EEO program is the handling of complaints. In the first nine months of Fiscal Year 1972 there were 3,689 complaints of racial or national-origin discrimination filed, and 1,139 complaints of sex discrimination—a total of 4,828 cases. If one adds to this number those who felt aggrieved but were afraid to come forward, or believed nothing would happen if they did come forward, the percentage of minority and female employees with problems related to their race, ethnicity, or sex becomes even more substantial.

CSC has drafted improved procedures[18] which reflect an awareness of problems within the agencies in handling complaints. Among other improvements, specific procedures for handling allegations of coercion or reprisal against a complainant are set forth for the first time. Another new provision allows CSC to take over the investigation of a complaint if an agency has not acted within 75 days.

Nevertheless, the proposals need strengthening. Terms like "impartial official" require further definition, and the time limits for processing complaints appear to be too lengthy. Further, investigations still will be conducted by individuals from the involved agency. Whether agency personnel can be fully impartial and whether the use of such personnel presents an image of fairness to complainants are serious questions. Private employers are not allowed to investigate complaints against themselves, and Congress now has authorized EEOC to investigate employment discrimination complaints against State and local governments. Self-review often has proven to be of limited value. CSC should, therefore, reevaluate this aspect of the complaint system.

VII. THE SIXTEEN-POINT PROGRAM

The Civil Service Commission has taken some affirmative steps in recruiting and examining Spanish surnamed Americans during the last fiscal year. Specifically, it has developed brochures that are used to attract Spanish speaking veterans to Federal employment. Commission recruiters made onsite visits to colleges with significant Spanish speaking enrollments and, as a result, have developed lists of Spanish speaking students qualified for Federal employment. The Commission also has worked with the Cabinet Committee on Opportunities for Spanish Speaking People in locating Spanish speaking candidates for Federal employment.

In addition, the Commission is studying the possibility of conducting classes to prepare Spanish speaking persons in New York for the FSEE.[19] The Commission also experimented in the Southwest with testing in the Spanish language.[20]

The Commission's Analysis and Development Division recently evaluated the effectiveness of the Sixteen-Point Program. The evaluation included an assessment of affirmative action programs at the installation level. An evaluation report has been drafted but has not been released.

The real test of the Sixteen-Point Program will be, of course, in the results it produces in terms of increasing the number of Spanish surnamed persons employed by the Federal Government, especially in professional and policy-making positions. In the 12-month period starting November 1970, when the program was first announced, there has been no change in the percentage (2.9) of Spanish surnamed Federal employees. In States like California and Colorado, where Mexican Americans account for 15 percent and 12.5 percent of the population respectively, they held only 3.9 percent and 5.0 percent[21] of the General Schedule positions as of November 1971.

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[17] CSC cites a study by the Educational Testing Service (ETS) as its validation source. ETS conducted a 6-year study which allegedly demonstrated that people who do well on tests do equally well on the job.

[18] These proposed changes to the Federal Personnel Manual were submitted to agencies, and comments were requested by Aug. 25, 1972.

[19] This project evolved from discussions CSC and the Cabinet Committee held with various Federal Regional Councils.

[20] This experiment proved unsuccessful because the examinees were found to be unfamiliar with test-taking and had not developed a facility to understand correct Spanish.

[21] In November 1970 they held, respectively, 3.6 percent and 4.9 percent of the General Schedule position totals.

Although special efforts by CSC and the Cabinet Committee undoubtedly will help in providing greater job opportunities for Spanish surnamed Americans, the greatest progress will come through the use of properly developed affirmative action plans which include numerical goals and timetables.

VIII. MONITORING AGENCY EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS

Equal employment opportunity programs are monitored and evaluated chiefly by personnel management specialists in CSC's Bureau of Personnel Management and Evaluation. Evaluations of agency EEO programs usually are conducted as part of the overall evaluation of an agency's personnel management system.

The specialists are provided with specific instructions for evaluating EEO programs.[22] The instructions explain the purposes and objectives of the evaluation, the type of data that should be used to determine progress in attaining program goals and identifying problem areas, and the manner in which the agency reporting sytem on EEO activities (such as recruitment and skills utilization) should be evaluated.

The instructions outline the basic approaches to use in conducting an evaluation of an EEO program. For example, a consultative approach is to be used initially, with the focus on problem identification and solution rather than on recommendations. This approach is suggested on the premise that the agency appears to be demonstrating a sufficient commitment to resolving EEO problems. If an agency, however, shows resistance to the consultative approach, it is suggested that the evaluator switch to the role of a regulator.

The instructions seem to provide sufficient explanations and examples of circumstances establishing the kind of approach to take. For example, resistance (which indicates the use of the regulatory approach) is defined as having an inactive program and/or having a program lacking in managerial attention or adequate followup.

A review of three CSC evaluation reports on EEO programs indicates that the use of both approaches has been effective. The consultative approach is relinquished when the program has not met CSC expectations. After the regulatory approach is applied, significant improvement results.

The reports did reveal, however, some deficiencies. For example, evaluation reports did not indicate a comparison of the agency's internal evaluation and the CSC analysis. Nor did they indicate the effectiveness of key EEO personnel, the manager's concept of mission accomplishment, or the adequacy of the agency's use of goals and timetables.

To improve agency monitoring, CSC is assisting agencies in developing and installing a data collection system which will provide statistics on minorities and females. The data will relate to such matters as hiring, promotions, training, grade distribution, and promotions to supervisory and managerial categories. Further, CSC is developing a Consolidated Personnel Data File (CPDF), which is expected to be operational by FY 1973. The CPDF is a computer system that will record 28 items of information on each Federal worker and feed back statistical employment information.

By FY 1974, CSC hopes to have the Federal Personnel Manpower Information System (FPMIS) implemented. FPMIS will contain racial data that can be merged with the CPDF. Both the CPDF and FPMIS will be expanded to support the needs of the EEO program and to provide up-to-date information monthly.

IX. ORGANIZATION AND STAFFING

Enforcement of the Federal EEO program is directed by CSC's Assistant Executive Director. Although he has been publicly designated Government-wide EEO coordinator, he is responsible for a great deal more than merely coordinating activities of the various agencies. He is the senior CSC decisionmaker regularly involved in the EEO program. The director of the Federal Equal Employment Opportunity program, as well as the directors of the Spanish Speaking Program (SSP) [23] and the Federal Women's Program (FWP), [24] report directly to CSC's Assistant Executive Director.[25]

The Office of the Director of Federal EEO fills two major functions.[26] One deals with management of the system for processing discrimination complaints. The other concerns the monitoring of agency implementation of EEO programs and the provision of EEO guidance to the agencies. The director of Federal EEO is also responsible for seeing that EEO functions are adequately built into the activities of the major bureaus in the Civil Service Commission.[27]

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[22] FPM Supplement (Internal) 273-72, Sept. 8, 1971.

[23] The responsibilities of the SSP director include publicising the need for increased affirmative action in the recruitment and promotion of Spanish surnamed people. He is the liaison between CSC, minority group organizations concerned with Spanish surnamed people, and the Cabinet Committee on Opportunities for Spanish Speaking People. He may review CSC inspection reports, complaint files, and employment statistics.

[24] The duties of the FWP director are similar to those of the SSP director but are naturally directed to the concerns of women.

[25] Prior to the third quarter of Fiscal Year 1972, the directors of FWP and SSP were integrated into the administrative structure of the EEO Office. When a new director of Federal EEO took office during the third quarter, the directors of FWP and SSP took on a line relationship to CSC's Assistant Executive Director. The organisational change was designed to expedite the handling of critical issues relating to women and Spanish surnamed individuals. It should be noted that the former director of Federal EEO was a GS-16 and the present director is a GS-15.

[26] The mechanisms for coordinating these activities include informal communication (e.g., regular meetings and telephone conversations) as well as weekly staff meetings held by the Commission's Executive Director. Heads of all major bureaus and the directors of Federal EEO, FWP, and SSP are required to attend these staff meetings.

The 11 Federal EEO representatives in the 10 CSC regional offices have major program oversight responsibility, although all key personnel in the major organizational components of the regional offices, including the Personnel Management and Evaluation Division, are assigned responsibility for providing EEO program direction to Federal agencies. At present, no regional staff other than Federal EEO representatives are assigned full-time EEO responsibilities. The EEO representatives report to the regional directors, who in turn communicate with the deputy executive director in Washington.[28] In an effort to tie the work of the regional EEO staff to the central office, two approaches are used. Since September 1972, the Federal EEO representatives have been required to submit, to the central office,[29] an annual report of action plans for EEO program leadership and a quarterly accomplishment report. Further, the director of Federal EEO and other central office officials make visits to regional and field offices to discuss program activities and problems with the regional directors and their staffs. The director of Federal EEO has scheduled evaluation visits to three regional offices during the first half of Fiscal Year 1973.

CSC has requested that the EEO funds it received in FY 1972 be more than doubled.[30] The Office of the Director of Federal EEO will grow from its present size of 10 positions to an allocation of 15 job slots. Likewise the Spanish Speaking Program and the Federal Womens Program, each of which presently has only two positions, will double in size. There are scheduled to be 26 Federal EEO representatives, as opposed to the 11 now in the field.

These increases are greatly needed and should help CSC fulfill the more active role it has set for itself in Fiscal Year 1973. However, there is reason to doubt that the increase is adequate. For example, the size of the present regional EEO staff is grossly insufficient, and the increase in Federal EEO representatives would help overcome that deficiency. Whether it will provide, however, enough personnel for comprehensive review of regional and installation EEO plans, on top of the other duties of the field staff, is another question. Clearly, CSC must reevaluate its staffing at the end of the fiscal year.

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[27] The Federal EEO director has numerous functions. He represents CSC at meetings, attempts to "sell" the program to agencies and minority groups, and acts as primary contact with agency EEO directors.

[28] The regional directors hold weekly staff meetings with the eight key regional managers, one of whom is the Federal EEO representative. During such meetings reports are presented and program status and progress are reviewed against program goals and objectives.

[29] The regional directors presently submit formal written reports to Washington on current and emerging problems and on program innovations. Such reports are reviewed by the deputy executive director and referred, for action or information, to the proper central office component.

[30] The total EEO cost to CSC was $2,776,600 for Fiscal Year 1972, and the total amount requested for Fiscal Year 1973 is $7,020,400. The most significant increase in funds (from $53,700 to $403,700) has been allocated to the Bureau of Manpower Information Systems. However, the Commission has requested a $208,200 increase in funds for the Office of Federal EEO. In addition, slightly more than a 50 percent increase in funds was requested for regional EEO activities for Fiscal Year 1973. The Commission also has requested 12 positions to validate tests.

DEPARTMENT OF LABOR (DOL) OFFICE OF FEDERAL CONTRACT COMPLIANCE (OFCC)

I. OVERVIEW

OFCC has not yet provided Federal agencies with adequate mechanisms for resolving compliance problems, thus weakening the impact of these agencies upon employment discrimination. The Department of Labor has not given the necessary impetus to implement the Federal contract compliance program effectively. It has delayed the approval of OFCC policy directives which would help provide essential guidance and leadership to agencies with compliance responsibilities.

The Department of Labor reorganization of OFCC has substantially weakened OFCC's position in the Department. Its current location within the Employment Standards Administration (ESA) emphasizes contract compliance's low priority. Budget requests for OFCC have been insufficient to provide the staff necessary for carrying out OFCC's mission.

The Commission on Civil Rights has long recommended that OFCC be taken out of the Department of Labor and merged with the Equal Employment Opportunity Commission. This review confirms our earlier fear that OFCC, as presently constituted, cannot effectively provide the leadership necessary to bring about a successful program. Until the recommended merger takes place, we urge the Office of Management and Budget to undertake a critical review of OFCC's status within the Department of Labor, giving serious consideration to establishing OFCC as an independent, policymaking agency.

II. RESPONSIBILITY

The Office of Federal Contract Compliance has ultimate responsibility for seeing that Federal contractors comply with Executive Order 11246, as amended. The Executive order requires contractors to abandon discrimination against applicants or employees on the basis of race, ethnicity, sex, or national origin, and to take affirmative steps to remedy continuing effects of past discrimination.

As prime administrator of the contract compliance program, OFCC has developed ultimate goals for the program.[1] It has not, however, set specific, goal-related objectives that address the need for innovative methods for determining the available supply of minority and female workers; for securing greater participation of minorities and women in training for jobs requiring executive management skills; and for increasing the level of remedial action to resolve pay-reduction and seniority problems of the affected class.[2]

III. MECHANISMS FOR PROGRAM ADMINISTRATION

A. Policies

Although DOL states that five new policy directives have been implemented since November 1971, only one —Revised Order No. 4—is in full operation. This Revised Order differs from Order No. 4 in two ways: it expands the application of goals and timetables to women and it makes reference to remedial action that contractors should undertake to provide relief for members of an affected class. While this reference to the affected class shows an awareness of a problem which OFCC instructs agencies to consider in reviewing a contractor, the instructions regarding this issue leave much to be desired. More detailed guidelines concerning identification of affected-class problems and feasible solutions must be provided by OFCC before Federal agencies can adequately review contractors' equal opportunity programs.

Although Revised Order No. 4 instructs contractors to use goals and timetables, it fails to instruct compliance agencies on how to evaluate a contractor's good-faith efforts. Further, data collected to measure the contractor's improvement of employment patterns are inadequate. Contractors, compliance agencies, and the Employment Standards Administration, of which OFCC is a part, usually report employment gains in the aggregate—e.g., the number of minorities and females newly hired. Such data provide a limited gauge of improvement in a contractor's or industry's employment pattern. OFCC has not developed any measures of achievement that relate total employment and total job opportunities promised by race, sex, ethnicity, and national origin to such variables as layoffs, new hires, and promotion gains for each specific job category—such as executives, engineers, scientific technicians, and machinists.

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[1] Ultimate goals include eliminating differences in unemployment rates and in the utilization of available workers by race, sex, religion, or national origin; and increasing the number of affirmative action plans in industries that offer the most potential for minorities and women.

[2] As defined in Revised Order No. 4, the affected class is a group of individuals "who, by virtue of past discrimination, continue to suffer the present effects of that discrimination. . . ."

Although OFCC has drafted four other directives besides Revised Order No. 4, none has been approved for implementation. Order No. 14, standardizing compliance review procedures, has been issued to compliance agencies but still is being modified. Guidelines on religious and national origin discrimination have been drafted but not issued.

Order No. 15, setting out procedures for conducting detailed desk audits[3] of agency compliance reviews, also has been drafted but not issued. Under this directive, desk audits on contractors who have been issued show-cause notices are to be conducted by OFCC staff. These audits are to include an evaluation of compliance review reports, as well as contractors' employment analyses, affirmative action programs, and side agreements[4] for resolving affected-class problems. Guidelines in Order No. 15 do not provide OFCC staff with detailed criteria for evaluating agencies' actions and are, thus, inadequate. (Paradoxically, OFCC is working on criteria for evaluating affirmative action programs of nonunion, construction contractors.)

Another directive being considered would establish permanent hearing rules for sanction proceedings conducted by OFCC. A draft of these was published in the March 1972 *Federal Register* and comments were solicited from interested parties.

The sixth directive, which was not listed in DOL's response, has been drafted but not approved. It would set guidelines for identifying affected-class problems. Action on these guidelines is pending the Secretary of Labor's decision in the Bethlehem Steel case (Sparrows Point, Md.), which involves affected-class issues.

The full meaning and implication of the policy directives cannot be weighed until they are in operation, and there is no way of knowing when that will take place. It is disappointing that OFCC, recognizing the many areas in which leadership is necessary, has managed to implement fully only one policy directive since October 1971. Instructions on matters such as minority employee underutilization have yet to be meaningfully addressed.

It should be noted that this lack of action is not entirely the fault of OFCC. A major part of the blame rests with Department of Labor officials who must approve OFCC initiatives.

B. Data Collection

OFCC has designed a system for collecting and maintaining racial and ethnic data on employment and training, including data on employer goals and timetables. OFCC also is developing tools for analyzing these data—aimed at assessing the progress of minorities and women, and at forecasting achievement of minority employment at parity for each major industry.

In a pilot project, OFCC has attempted to measure employment opportunities for blacks[5] in 11 selected industries in selected labor areas. OFCC has developed a "penetration ratio" to measure the extent to which minorities are included in the work force and an "occupation ratio" to determine the extent to which pay received by minorities[6] in a particular occupation is commensurate with the pay received by all persons in that occupation. These measures were undertaken to determine the year in which blacks would achieve parity in certain industries.

A major shortcoming of the analyses is that they are based upon the total labor area work force in a given industry and not upon particular job categories (e.g., business managers, computer programmers, welders, maintenance engineers) within a given industry. Occupational data necessary to remedy this deficiency are available from the 1970 census and the Employment Security Agencies. OFCC has not yet, however, developed a system for incorporating such data into its own analyses.

Another OFCC measure is designed to determine program effectiveness by industry. This measurement compares goals for hiring minorities with the total number of an industry's vacancies. OFCC does not go beyond this, however, to ascertain systematically the actual number of minorities currently employed or the number hired after the goals were set. This measure cannot be used, therefore, to assess the adequacy of the goals or the extent to which they are subsequently realized. The analyses are further limited because goals for hiring minorities are not examined separately for each racial and ethnic group.

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[3] "Desk Audit," as used in this paper, is an examination conducted by OFCC staff of written materials, from agencies and contractors, pertinent to contract compliance. Such an examination is conducted to determine and correct inconsistencies and failures on the part of compliance agencies and contractors to meet OFCC policy, guidelines, and standards.

[4] Side agreements refer to covenants or pacts, signed by contractors, which set forth courses of action they agree to undertake in correcting affected-class employment problems that are not included in the affirmative action plan.

[5] OFCC measured such things as recruitment and promotions.

[6] The "penetration ratio" compares, for a given geographic area, the percent of the work force in a given industry which is minority with the percent of the total work force in all industries which is minority. The "occupation ratio" compares the median average wage of minorities in a given occupation with a median average wage of total employees in that occupation. Both the "penetration ratio" and the "occupation ratio" also may be used to measure the employment status of women.

OFCC also compares goals for promoting minorities with the total number of vacancies. However, this and other measures of program effectiveness do not reflect awareness of the spectrum of discrimination problems experienced by an affected class within a particular industry. Nor do the measures show what steps have been taken to remedy affected-class problems for any particular race, sex, ethnic group, or national origin group. For example, data should reflect any change in seniority or lines of progression for promotion. Even in the monthly and quarterly reports which agencies are required to submit on data compiled during compliance reviews, no data are supplied on discrimination and other problems of affected classes. In addition, these reports do not include data on changes in testing policies and the resulting changes in employment.

OFCC has been considering various measures[7] for evaluating an agency's enforcement performance. The merit and adequacy of some of these measures, however, have not been assessed.

C. Coordination and Monitoring of Compliance Agency Activities

As prime administrator of the Federal contract compliance program, OFCC has delegated the responsibility for implementing program goals to 19 Federal agencies[8] OFCC is obligated to provide these agencies with guidance and leadership and to monitor and evaluate their performance.

OFCC requires compliance agencies to set fiscal year goals[9] for the number of compliance reviews and the number of minorities to be hired and promoted within the particular industries for which they are responsible. OFCC's ultimate goals,[10] however, have not been made sufficiently clear to the agencies. They have received insufficient instructions and guidance for the conduct of preaward and compliance reviews, for the collection and analysis of data, and for the evaluation of affirmative action plans.

OFCC reports some success in improving coordination with compliance agencies. During the last quarter of Fiscal Year 1972, OFCC conducted its first evaluation of compliance agencies. This evaluation was designed to identify staff and program weaknesses and training needs; to provide feedback on the dissemination, interpretation, and implementation of policy directives; and to improve reporting procedures. The objective of this evaluation was to facilitate program modifications, adjust staffing patterns, and rearrange priorities, wherever necessary.[11]

Another step toward monitoring compliance agencies was the initiation, in 1970, of joint agency-OFCC compliance reviews. These joint reviews have been few in number, however, and only one was conducted during 1972. OFCC has not yet developed a schedule of reviews to be conducted in the current fiscal year, and has not even set goals for the number of joint reviews to be conducted.

OFCC is implementing a Management Information System to determine priorities for selecting industries for compliance agencies' reviews, as well as for its own reviews. The system also is designed to ensure consistency among the agencies in scheduling reviews. When Order No. 15 is issued, OFCC plans to conduct desk audits to monitor agencies' processing of cases which have precipitated show-cause notices. OFCC has not yet allocated the manpower to conduct such audits, however, and has not determined how many audits it will conduct annually.

OFCC's main emphasis during Fiscal Year 1972 on agency coordination has been the development of interagency task forces. These task forces evolved, however, from requests by the compliance agencies for assistance in implementing Order No. 14 and cannot be attributed solely to OFCC initiative.

Overall, OFCC has not adopted a systematic approach for communicating with and coordinating activities with compliance agency personnel on a regular basis. The Department of Labor held monthly meetings with compliance agencies until February 1972 but has held no formal meetings with them since that time. There is a significant lack of clearly defined mechanisms for coordinating activities between agencies and OFCC. Agencies have not been provided with timely feedback to assist them in resolving problems.[12]

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[7] Some measures are (1) the number of show-cause notices; (2) the number of new hires and promotions per compliance review; (3) the ratio of show-cause notices to the number of compliance reviews, which is purported to provide an evaluation of enforcement posture; (4) the percentage of affirmative action plans approved against the number reviewed; and (5) the number of new hire and promotion goals in relation to the number of reviews conducted for that month, related to the manhours expended per review.

[8] Order No. 1 assigns compliance responsibility to 15 agencies. OFCC has granted four additional agencies—the Environmental Protection Agency, the Small Business Administration, the Department of Justice, and the Tennessee Valley Authority—the compliance responsibility for their respective agency's construction contracts.

[9] The only goals of which agencies are aware are those which include the projected number of compliance reviews and the number of hirings and promotions within the industries for which the agency is responsible.

[10] See note 1 for examples of these goals.

[11] The evaluation reports have not yet been released and thus their adequacy has not been assessed by this Commission.

[12] Moreover, OFCC's own national office staff appears to lack direction. It awaits official approval for the directives, such as Orders No. 14 and 15, to be issued to compliance agencies, and for guidelines on identifying affected-class problems.

D. Coordination and Monitoring of Construction Area Plans

OFCC is conducting audits of construction contractors participating in hometown and imposed plans. Participating contractors are required to submit data on the type of work in which they are involved, and on their minority employment. The latter data show minority man-hours and the number of positions held by minorities.

A major shortcoming of this reporting system is that minority group data are not broken down by race, national origin, or ethnic group. Another shortcoming is that the data do not reflect the racial and ethnic composition of the contractors' operations on non-Federal jobs. OFCC plans to focus its attention on participants in one area plan at a time, rather than waiting until construction industry data for all plans are submitted. To be sure that all areas receive adequate attention, it is essential that OFCC develop a schedule for the review of each area in the current fiscal year.

E. Enforcement Tools

Compliance agencies, overall, have not made sufficient use of the enforcement tools of contract cancellation and contractor debarment. OFCC has indicated that there is a need for the development of lesser sanctions for compliance agencies to use, in order to provide additional enforcement muscle. OFCC has not stated, however, what kinds of lesser sanctions might be feasible or under what circumstances they might be used.

One obstacle to effective use of enforcement tools is that many compliance officers lack sophisticated skills needed to arrive at a meaningful conciliation agreement. Neither the officers in the compliance agencies nor those in OFCC itself have been given adequate training or instruction in conciliation techniques. Indeed, OFCC has not even issued a conciliation manual.

IV. ORGANIZATION AND STAFFING

OFCC is one of four divisions in the Department of Labor's Employment Standards Administration. The Director of OFCC reports to the Assistant Secretary for Employment Standards. The Employment Standards Administration makes quarterly reports to the Secretary on OFCC activities.[13] The fact that OFCC occupies such a low position in the Department of Labor is one of its principal weaknesses, indicating lack of full commitment to effective implementation of the contract compliance program.

Following a March 1971 reorganization of ESA regional offices, OFCC regional staff was consolidated with ESA staff. The regional staff is thus no longer officially accountable to the Director of OFCC. Only in the area of technical assistance does the line of authority run directly from the OFCC national office to the OFCC field staff. In all other instances, OFCC field staff reports to the regional ESA administrators, weakening the authority of the OFCC Director in regional offices. Regional administrators are required to submit weekly reports to the Director of OFCC, primarily covering correspondence relating to contract compliance.[14]

In the course of the consolidation, ESA staff members with no contract compliance experience were given contract compliance responsibilities. Although ESA promised to provide appropriate training for these staff members, this has not yet been done.

Department of Labor officials say a major reason for the reorganization was to reduce OFCC's operating overhead. Nonetheless, the saving is several hundred thousand dollars at most and results in a substantially weaker program. The saving should be weighed against the economic cost of discrimination in contract employment, which OFCC estimates to be $24 billion per year.

OMB authorized 112 positions for OFCC in Fiscal Year 1972, but the Department of Labor made no effort to fill many of these positions. Although it was intended that manpower would be transferred from ESA's Wage and Hour Division to fill many of these positions, this transfer never took place. In fact, some of the staff within the OFCC national office were transferred to other divisions in the Department. By mid-August 1972, there were only 54 staff members in the OFCC national office. In regional offices, OFCC has 18 staff persons in eight cities, and the national office was unaware of any ESA positions transferred to OFCC at the regional level.

ESA has requested $2.6 million for OFCC in Fiscal Year 1973. This is the same as the 1972 level, which has been inadequate for implementing a comprehensive contract compliance program.

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[13] These reports provide only general data on OFCC performance.

[14] This mechanism is used to detect any backlog in correspondence.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

I. OVERVIEW

EEOC is just beginning to take a systematic approach to handling its responsibility. A number of programs are being developed to correct many of the agency's management problems and could result in more efficiency in dealing with its caseload. For example, a new tracking system, if approved, will come close to establishing a priority system for processing complaints.

The backlog will continue to increase, nevertheless, and EEOC will need to constantly improve its operations, increase its staff, and rely on such outside assistance as State fair employment agencies. In addition, training will have to be organized and conducted more efficiently. Prompt and significant action is necessary to implement the 1972 EEOC Act, both with regard to increasing court action and dealing with discrimination in State and local government employment.

All of the changes made and proposed by EEOC are potentially effective. Close monitoring of EEOC by all concerned is needed to ensure continued improvement and adequate utilization of its new enforcement power, its additional staff, and its improved management procedures. Although there is reason for optimism, most of the recent activity has been in developing plans rather than in action and results. Yet action and results must be the ultimate tests and should be forthcoming now, and not in another eight-year period of EEOC existence.

II. ORGANIZATION, STAFFING, AND TRAINING

A. Organization

EEOC has made no structural changes during the last fiscal year. However, plans are under consideration to establish five litigation centers reporting to the Office of General Counsel. These centers would be separate from the Commission's regional structure.[1] If the Fiscal Year 1973 budget request is approved by Congress, there would be approximately 30 attorneys per center. Implementation of this proposed change is being hindered by congressional inaction on the agency's budget request. EEOC contends that the failure of the Civil Service Commission (CSC) to approve supergrade positions for the directors of the centers is another hindrance. This Commission, however, believes that these positions could be filled at the GS-15 level until negotiations between EEOC and CSC are completed.

B. Staffing

EEOC has 877 authorized professional positions. The agency is accepting applications in anticipation of congressional approval of its request for 746 additional professional slots, but its work continues to be seriously impeded by lack of funds.[2] EEOC's staff request for Fiscal Year 1973 is considered by agency personnel to be adequate for the Commission's needs,[3] but the additional staff will not make an impact on reducing the backlog of charges.

Staff increases probably will be needed annually until an appreciable impact has been made on EEOC's complaint backlog and systemic discrimination in the Nation. These increasees should not exceed 50 percent, since the agency could not adequately manage an excessive number of new employees.

C. Training

EEOC's training program has been almost totally directed toward its compliance staff.[4] During Fiscal Year 1972, 676 professionals attended a 40-hour course on the technical aspects of compliance. The Commission is planning new programs to meet training needs necessitated by the expanded coverage provided in the 1972 Act.

Training responsibility has been divided between two offices: one responsible for logistics and the other for program content. Agency consensus is that program specialists are best suited to conduct EEOC's training because of the complicated nature of compliance activities. Specialists are familiar with the Commission's most recent decisions, court cases, and investigative techniques. This enables them to bring the most up-to-date information to training sessions. Yet the heavy reliance on compliance specialists for training cuts into their ability to do their own work. Recognizing this, EEOC is beginning to use more video tapes and other audio-visual aids.

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[1] These centers would be responsible for handling court cases under the new enforcement authority established by the Equal Employment Opportunity Act of 1972.

[2] There are 92 authorized attorney positions in the Office of General Counsel. The Fiscal Year 1973 budget would add 250 attorneys. These new positions are needed to implement the EEO Act of 1972. The shortage of litigation attorneys partially explains EEOC's lack of activity in this area.

[3] In determining its budget requests, EEOC has taken into consideration the difficulties it will encounter in filling new vacancies and maintaining a balanced staff.

[4] Exceptions are a training program for 30 Voluntary Programs Officers and a general orientation for EEOC staff.

A major problem is that the training is not systematic. Much of it consists of on-the-job training at the district levels. Consequently, the quantity and quality of training varies from district to district. In a step toward uniformity in training, EEOC has begun the development of comprehensive training manuals on the technical aspects of compliance.

With the influx of new staff and the transfer of staff between units, it is essential that training be conducted on an ongoing basis. The most effective way of doing this is to establish an adequately staffed central office with overall training responsibility. Specialists still would be used, but under the direction of a full-time training coordinator. The coordinator would, among other things, assure cooperation and uniformity among the various districts.

III. MANAGEMENT

EEOC continues to experience serious management problems. There has been a lack of emphasis on the efficient conduct of day-to-day operations. Consequently, the agency has suffered from management's inability to provide needed services on a timely basis.

In the past, the agency has been hampered by a lack of clear definition of each office's responsibilities and the means by which each office would be held accountable. Although the chief manager of the agency is its Executive Director, critical functions are performed by the Office of Management,[5] and that Office reports directly to the EEOC Chairman. This continues to pose serious problems,[6] but steps are being taken to correct some of them.

The Office of General Counsel has encountered difficulties in obtaining needed office space and supplies and in filling clerical and paraprofessional vacancies. The entire Office of General Counsel was moved out of the agency's headquarters because of a space shortage. The new facilities provided this Office will not suffice[7] even if the Fiscal Year 1973 budget request is approved.

At the suggestion of the Office of Management and Budget, EEOC is developing a Performance Management System (PMS) which should be operational by the end of the third quarter of this calendar year. This will have both short- and long-range significance for the agency. The basic idea is to provide clear agencywide and divisional program goals and objectives. PMS requires the development of accountability systems which the agency has needed for some time. Although not designed to reduce the backlog of charges *per se*, PMS is expected to help resolve problems which have hampered efforts to reduce the backlog.[8]

Also being developed is a Work Measurement System, designed to collect from each district office data on the amount of time district office employees spend on specific functions. This should provide EEOC with a good tool for improving management. Some of the Commission's reporting systems duplicate each other, and the Commission has recognized the need to streamline its internal reporting systems to eliminate the overlap.

IV. EQUAL EMPLOYMENT OPPORTUNITY (EEO) ACT OF 1972

The EEO Act of 1972 effective March 24, 1972, makes EEOC responsible for three new groups of employers: (1) public and private educational institutions; (2) State and local governments; and (3) effective March 24, 1973, employers and unions with 15 to 24 members. The act gives EEOC authority to enforce its decisions in the courts. Although EEOC is reluctant to estimate the number of complaints in Fiscal Year 1973 resulting from its expanded jurisdiction, it received 1,326 complaints concerning educational institutions and State and local governments from March through June.

EEOC had filed only five court cases under the act by the end of Fiscal Year 1972,[9] but others were being prepared. Among reasons given by EEOC for not filing more cases is that it did not know what type of enforcement powers, if any, it would receive from Congress until the act was passed. The argument is not totally compelling. EEOC knew that if it received any new enforcement tools it would be authorized to file lawsuits or issue cease and desist orders. The agency could have begun developing alternative plans to ensure that once the act was passed, a number of cases would have been ready for presentation.[10] The prompt filing of a number of important, precedent-making cases not only would have strengthened morale at EEOC but also would have served warning upon employers and unions that EEOC intended to enforce the act aggressively.

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[5] Examples of these functions include securing personnel, obtaining office space and supplies, and authorizing travel and expenditures.

[6] An example of such problems is the dissension between the Executive Director's Office and the Office of Management over matters related to travel authorization and fund expenditures. Previously, no standardized controls on travel authorization and expenditures were applied to the Office of the Executive Director and field personnel. Now, the Office of the Executive Director is required to adhere to policies established by the Office of Management.

[7] The move itself will come at a time when the Office should be devoting full attention to implementing the EEO Act of 1972. The act places the Office of General Counsel in a central role in the agency, and it would appear that ways should be found to keep the Office at headquarters.

[8] For example, there traditionally has been some confusion over the role of regional directors. Decisions often were made by headquarters staff without consideration of regional staff opinions. PMS will clarify the authority of regional directors and specify their degree of control over district officers.

[9] The first case was filed a week after the act became effective. In determining initial priorities for filing suit, large corporations were excluded because of the large amount of time required to prepare cases against them.

Another justification offered for EEOC's failure to adopt a more assertive role, immediately following passage of the 1972 Act, was its lack of staff—specifically lawyers—and inadequate budget. Yet EEOC failed to have a supplemental budget request ready once the act was passed, deciding instead to amend its Fiscal Year 1973 budget request.[11] No attempt was made to obtain money from the President's Emergency Fund, and it appears that no steps were taken to reallocate existing vacancies or to make the hiring of attorneys a priority.

At present, EEOC does not plan to give special preference to State and local government cases.[12] There are at least two reasons which make it imperative that EEOC reconsider this decision: (1) State and local governments are among the largest employers in the Nation; and (2) Congress probably will pass one or more of the proposed revenue sharing bills.[13] EEOC needs to develop strong action-oriented programs designed to raise State and local government employment standards to the level required of Federal agencies and contractors as rapidly as possible.

EEOC is still negotiating with the Attorney General on processing referrals pursuant to Section 706(f)(1) of Title VII.[14] The Commission has not referred a State or local government case to the Justice Department for court action despite the fact that it has received over 800 complaints on this subject since the act became effective.[15]

V. REFERRALS TO THE JUSTICE DEPARTMENT

During Fiscal Year 1972 there were only 13 Section 707 referrals to the Justice Department.[16] Many of the referrals in Fiscal Year 1972 were made at the end of the year, and the Department has not had an opportunity to act on them.

EEOC has recently changed its internal referral procedure to give regional and district directors more authority in selecting possible referral cases and actions for EEOC litigation, and to give more emphasis to cases of national importance. Complaints which are potential 707 referrals, or which may be the subject of EEOC litigation, are identified at the district level after investigation and conciliation efforts have failed. District directors have been asked to forward one case a week to regional directors. Regional directors, after evaluating the cases, forward them to the General Counsel's Office, where a recommendation for final action is made.

There are distinct possibilities that such cases, especially those of national impact, could be identified for enforcement action upon initial receipt. At present, however, this is not being done. EEOC should begin thinking of guidelines, procedures, and criteria to identify possible court-action cases as early as possible.

EEOC and the Justice Department have not developed parallel investigative techniques and requirements, and the result is time-consuming duplication of work because Justice officials often feel EEOC reviews are inadequate. EEOC has developed its own investigative manuals, and these manuals should include joint Justice-EEOC requirements for investigating Section 707 referrals. Justice should be able to file suit without doing a significant amount of additional work on EEOC referrals.

VI. COMPLIANCE ACTIVITIES

Excluding charges filed under newly added coverage, EEOC anticipates 45,300 charges to be filed during Fiscal Year 1973. The average time required to process a charge, from receipt to disposition, has increased to 60.2 field professional man-hours in Fiscal Year 1972. To reduce this, EEOC has changed its compliance procedures. Basically, the agency is simplifying its procedures and providing more informal options, allowing complaints to be resolved informally at any stage. More authority will be given to regional and district directors. Precedent cases compiled by EEOC now can be relied upon. Data processing techniques, a Performance Management system, and a Work Measurement System will be used to expedite staff efforts.

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[10] Preparing a case for either a judicial or administrative hearing requires much the same type of effort in terms of fact-gathering and analysis, determination of remedies to request, and legal research.

[11] There is some justification for this action in that Congress probably would not have approved the request by the end of Fiscal Year 1972. However, a supplemental budget request would indicate to Congress that EEOC was anxious to implement the new act.

[12] In some instances, as in the case of private employers, priority treatment will be given to charges involving such matters as reprisals.

[13] These bills provide Federal funds to States and localities without the traditional Federal requirements specifying how the money should be spent. This increases the ability of State and local officials to affect the distribution of the funds, thus making more urgent the need for fair employment practices at this level.

[14] Section 706(f)(1) specifies that State and local government cases are to be referred to the Justice Department for possible civil action.

[15] The Justice Department, however, has filed two lawsuits against local governments for violation of the 1972 Act.

[16] Section 705(g)(6) empowers EEOC to refer matters to the Attorney General with a recommendation that a civil action be instituted under Section 707. That section in turn permits the Attorney General to institute a civil action when he or she has reasonable cause to believe that there is a pattern or practice of resistance to the rights secured by Title VII. In fiscal year 1971, EEOC selected 36 files for referral, but the Justice Department agreed to act on only one.

There is no way of determining what impact these proposed changes will have on reducing the charge backlog. By June 1972, the backlog had increased to 53,410.

A track system, currently before the Chairman for approval, should provide a useful priority tool for expediting charges. Charges on tracks three and four are those which can be rapidly resolved because they are uncomplicated and deal mainly with single issues. Track one charges, to be handled by headquarters, are of national importance and deal with systemic discrimination. The Commission plans to handle more of these cases by establishing a national unit of 50 to 75 persons who will work in seven-person teams. Cases on track two involve systemic discrimination of regional significance. It is anticipated that once the number of national-impact cases has been reduced, the Commission will shift more resources into the effort to resolve track two cases.

During Fiscal Year 1972, EEOC continued its attack on industrywide discrimination. Industries involved were canneries in California and the electric, gas, telephone and telegraph utilities nationwide. Charges were filed against gas and electric companies following Commission hearings on the utilities industry.[17] An investigation involving five canneries has just been concluded. EEOC intervened before the Federal Communications Commission when the American Telephone and Telegraph Company (AT&T) requested a rate increase. EEOC contended that AT&T discriminatory employment practices should be eliminated before a rate increase is granted. Hearings are continuing, and AT&T was expected to begin its presentation in September 1972.[18]

As a result of charge-initiated investigations, the Commission's Conciliation Division has engaged in industrywide conciliation efforts in the airline, shipping, paper, trucking, construction, news media, engineering and oil-production industries as well as with national youth volunteer organizations. The Commission has involved, to some extent, the various Federal contract compliance agencies in its conciliation efforts.[19] Additional coordination is needed if Federal policy toward its contractors is to be consistent and duplication of effort is to be avoided. No overall Federal compliance program with priorities and agency assignments has been developed.

VII. BACKLOG

The backlog charges at EEOC has increased from 23,642 in September 1971 to 53,410 as of June 30, 1972, and is expected to exceed 70,000 by the end of Fiscal Year 1973 unless effective procedural changes are made. A total of 43,101 backlogged charges are pending investigation. Eliminating the backlog continues to be one of EEOC's most pressing problems.

Some steps are being taken to reduce the backlog. The Commission completed a major study of its compliance program in February 1972 and recently voted to make significant changes in its compliance procedures. These changes, like the tracking system, are designed to increase the rate of charge resolution.

Nevertheless, excluding charges which will be filed under the 1972 amendments to Title VII, the Commission anticipates 45,000 new charges during Fiscal Year 1973. Even with staff increases over the next few years, it probably will take at least four to five years to eliminate the backlog of charges.[20]

State and local Fair Employment Practices (FEP) agencies must be recognized as an important means of reducing the backlog. More will have to be done, however, to raise the standards of these agencies to the level of EEOC and to improve their rate of successfully resolving charges.

VIII. DEFERRAL OF CHARGES

During Fiscal Year 1972, 14,218 charges were deferred to State FEP agencies. In Fiscal Year 1971, 8,516 charges were deferred. EEOC does not have data on the number of charges that were resolved or the number which reverted to EEOC for subsequent processing.

An EEOC study found that 22 State deferral agencies processed 35,715 charges between 1968 and 1971 and made 6,869 findings of probable cause—a cause-finding rate of 19.2 percent. Realizing the need to improve this rate of cause-finding, EEOC developed a FEP contract program. EEOC is requiring agencies under contract to initiate charges alleging a pattern or practice of employment discrimination whenever possible, rather than merely adjudicating individual complaints.

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[17] See Section XI, Commission Hearings.

[18] EEOC has a task force working on the AT&T case. Coordinators in each office identify AT&T charges. These charges are consolidated into the overall case, for which there will be one conciliation agreement. Based upon evidence adduced by EEOC, there is over $3 billion in back pay involved. EEOC had thought in terms of seeking only a small percentage of this figure ($50 to $75 million), while FCC thought $300 million should be sought in a national agreement.

[19] For example, EEOC has kept the Federal Aviation Administration informed of its involvement with the airline industry. EEOC sends conciliation agreements to compliance agencies for review.

[20] Future staff increases—coupled with new programs now being implemented for more operational efficiency and others subject to Commission approval—should have the effect of quickening EEOC reaction time; i.e., disposing of a charge in an effective manner relatively soon after the charge is filed with EEOC.

EEOC's amended regulations on deferrals provide that in order for a State or local agency to receive deferred Title VII charges, it must apply to EEOC and certify that its law is comparable to Title VII in scope and in interpretation.[21] Once approved, the agency must demonstrate its continuing ability to furnish the same rights and remedies as those afforded under Title VII.

As of January 1, 1972, findings had been made in 861 cases processed by State agencies under EEOC contracts, and violations were found in 736, or 81.2 percent. This would seem to indicate that introducing Federal standards of case processing through EEOC funding has increased these agencies' effectiveness. The contracts also have produced an unprecedented number of State court actions. EEOC is increasing the number of training programs for State agencies.

EEOC will never be able to do everything necessary to eliminate discriminatory employment practices. It must, therefore, devote more time and resources to developing the potential of State FEP agencies. EEOC should conduct a study of ways these agencies could be used, and it should begin planning to improve agencies currently unqualified to receive its grants. The 1973 budget request of $4,600,000[22] for FEP agency contracts is only a beginning.

IX. ENFORCEMENT OF CONCILIATION AGREEMENTS

EEOC continues to give low priority to enforcement of conciliation agreements with respondents, reportedly because of a shortage of manpower. The agency responds only when a blatant violation is reported. Even then, an attempt is made only to correct the problem reported. No effort is made to review the entire conciliation agreement to determine if other violations exist. The Commission has, however, a procedure whereby respondents who are part of a class-action charge report on their progress in meeting the terms of their conciliation agreements.

EEOC has requested additional field resources in its Fiscal Year 1973 budget submission to carry out a program of postagreement reviews. Under the proposed program, two conciliators would be assigned to each regional office. They would devote all of their time to conciliation reviews and other followup activity. Considering the number of conciliation agreements and the number of violations reported, two conciliators per region probably would be sufficient to review alleged violations of agreements but not for undertaking the general followup program which is necessary.

This should become an important aspect of the Commission's activity—especially in view of EEOC's authority to enforce its conciliation agreements judicially. The agency should think in terms of expanding the number of conciliators and assigning some to each district office.

X. COMMISSIONER CHARGES

A total of 197 Commissioner charges was filed in Fiscal Year 1972, an increase of 37 above the previous fiscal year. Heretofore, a systematic use of such charges has been limited by (1) a lack of enforcement authority; (2) the need to cope with the growing backlog of cases; and (3) the fact that most Commissioner charges were broad in scope, thus requiring major investigations and a large commitment of staff.

Since EEOC now has the authority to enforce its own conciliation agreements, has hopes of reducing its backlog through improved management techniques, and has more staff, it may now increase its use of this important enforcement tool. Studies are being made of ways of utilizing Commissioner charges against select industries and geographic targets, and of using Commissioner charges to consolidate large numbers of unresolved cases against major corporations.

XI. COMMISSION HEARINGS

It has become Commission policy to hold, generally, one full-scale public hearing a year. The 1973 budget request provides sufficient funds for more hearing activity, but the Commission has not decided whether additional hearings should be a priority item. In view of other pressing needs, an enlargement of hearing activity may not be the best use of EEOC manpower.

In scheduling hearings, the Commission considers such factors as compliance history, minority and female employment, and potential for increased utilization of minorities and females. In Fiscal Year 1972, one hearing was held in Washington, D.C., during the week of November 16, 1971, on the employment practices of the gas and electric utilities industry. As a result, nine firms were selected for Commissioner charges[23] and 11 for voluntary followup programs.

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[21] State FEP agencies have been given temporary agreements which allow them one year to meet the new EEOC standards. Some agencies already qualify, while others will have to have their legislatures strengthen their Equal Employment Opportunity (EEO) laws. EEOC interprets Title VII to mean that it is not required to defer charges to State agencies with inadequate EEO laws. The interpretation will probably be challenged in the courts.

[22] $1,500,000 was allocated in the EEOC's 1972 budget for FEP agencies.

The Commission offered 10 companies technical assistance. Two rejected the offer, three accepted, and five initially postponed acceptance.[24]

XII. RELATIONS WITH THE OFFICE OF FEDERAL CONTRACT COMPLIANCE (OFFCC)

EEOC has had little contact with OFCC, and that has been on an informal basis at the regional level. Reorganization at OFCC and EEOC's activities relating to the EEO Act of 1972 are reported to have been the barriers to extensive and continued liaison. Although EEOC recognizes the need for changes in the Memorandum of Understanding,[25] no plans are envisioned to make those changes. The Equal Employment Opportunity Coordination Council, of which both EEOC and OFCC are members, is to review duplication and inconsistency, but the Council has met only twice since March. At neither meeting did its members discuss substantive issues.

Since OFCC has been reorganized in such a manner as to make its effectiveness at best questionable, it is of primary importance that EEOC assume a larger leadership role. It is imperative that EEOC take the lead in assuring cooperation, joint planning, and policy implementation among all Federal agencies involved in securing equal employment opportunity. EEOC has yet to indicate its acceptance of this role.

XIII. UNIONS

In Fiscal Year 1972, EEOC funded three research and development programs attempting to eliminate systemic discrimination in referral unions [26] through administrative law enforcement techniques. Two of the projects are in the investigative stage. The third, however—that of the New Jersey Division on Civil Rights—has resulted in consent orders with three unions and employer associations. The orders are designed to eliminate discriminatory apprenticeship and membership requirements and to increase minority referrals and membership. Material developed by the New Jersey program will be provided to six other funded agencies which have initiated charges alleging a pattern or practice of discrimination against referral trade unions.[27]

Although these projects and other *ad hoc* activities are intended to deal with union discrimination, they scarcely begin to reach the level of action necessary to combat discriminatory union practices. Sufficient EEOC resources have not been allocated to eliminate these practices on a systematic basis, and inadequate attention appears to have been paid to this important aspect of EEOC's mandate.

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[23] At the request of the Department of Justice, the Commission did not issue a charge against one company but referred its information to Justice for investigation and possible Section 707 action.

[24] Three of the five which initially postponed acceptance later accepted.

[25] The Memorandum of Understanding is a complaint-handling agreement signed by EEOC and OFCC on May 20, 1970.

[26] A referral union is one which operates a hiring hall; i.e., one which exercises the functions of referring its members for employment.

[27] At the request of Washington, D.C., Printing Specialists and Paper Products Union Local 449, International Printing Pressmen and Assistants' Union of North America, AFL-CIO, the Commission developed an affirmative action plan to add 800 employees (mainly black) within Local 449's jurisdiction and eventually achieve 24 percent minority representation in the Washington area's 40 unionized printing plants.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)

I. OVERVIEW

During the past year, HUD has strengthened its approach to the enforcement of Title VIII and Title VI. Through the issuance of important new regulations, it is working for wider compliance with Title VIII by building fair housing criteria into the funding process for HUD programs. For example, applicants for funding of subsidized and public housing projects must now take steps to widen the range of housing opportunities available to minorities, and builders and developers applying for HUD assistance must follow affirmative marketing policies in soliciting buyers and tenants.

These criteria, however, fail to cover major aspects of HUD programs. Affirmative marketing guidelines do not place fair housing requirements upon the sale or rental of existing housing. Applicants for community development programs are not required to demonstrate fair housing efforts, except with regard to low- and moderate-income housing. The essential criteria for tenant selection have not yet been issued.

Implementation of the criteria has also been inadequate. In most cases, equal opportunity personnel have not been assigned a clearly defined and significant role for executing the criteria.

In addition to the criteria, HUD has undertaken a program to encourage widespread affirmative action toward reaching national fair housing goals. It has established an Office of Voluntary Compliance within the Office of the Assistant Secretary for Equal Opportunity to work with the real estate industry and with State and local agencies. Among the Office's projects is negotiating across-the-board affirmative action plans with homebuilders who have a nationwide business.

HUD's efforts to combat discriminatory situations, however, continue to focus on complaint processing rather than upon compliance reviews. Its only compliance reviews are in conjunction with its Title VI responsibilities. These reviews focus on recipients of HUD assistance and not on the dual housing market, which exists over and above HUD programs and is covered by Title VIII. Further, in the past year HUD conducted only 186 such reviews, although it funds some 12,000 local agencies. HUD has yet to initiate its planned citywide reviews to determine compliance by State and local agencies and by the housing industry.

Despite its currently limited capacity for conducting compliance reviews, HUD has not issued comprehensive guidelines for determining where such reviews are needed. Even in those instances in which HUD makes a finding of noncompliance, it often becomes involved in protracted negotiations with the offender instead of using its authority to terminate or even defer funding.

HUD is attempting to establish a comprehensive system for collecting and using data, but few tabulations are yet available. Moreover, the tabulations planned, although reflective of minority participation in HUD programs, will not provide information about residential patterns of segregation.

HUD recently convened a committee of Federal agency representatives for Government-wide coordination. And under an agreement with General Services Administration, the Department plays a role in assuring adequate lower-income housing, open on a nondiscriminatory basis, in areas where Federal agencies are locating. Overall, however, HUD has been slow to take initial steps for assuming Federal leadership under Title VIII.

HUD has reorganized its Equal Opportunity Office to provide support for its expanded focus and has planned substantial training of equal opportunity field staff to prepare them for their new assignments. Nonetheless, the Office of the Assistant Secretary for Equal Opportunity remains understaffed, and this will diminish the reorganization's promise for facilitating the execution of HUD's new responsibilities.

Overall, HUD has made significant improvements in the structure of its civil rights effort, but its new requirements leave unattended several major areas. Although HUD has gone a long way toward establishing an effective compliance program, what exists at present is a paper program. The real test will be HUD's performance during the current fiscal year.

II. PROGRAM AND CIVIL RIGHTS RESPONSIBILITIES

HUD is the major Federal department involved in the production of housing.[1] It also bears primary responsibility for Federal efforts in community planning and development.[2]

HUD's most significant duties relating to equal opportunity in housing and urban development are the enforcement of Title VIII of the Civil Rights Act of 1968 and Title VI of the Civil Rights Act of 1964.[3] Title VIII prohibits discrimination in the sale and rental [4] of most housing.[5] HUD is charged with the overall administration of this title, and specifically with the investigation and conciliation of related complaints of discrimination. Title VIII further requires that HUD and all other Executive agencies and departments administer programs and activities relating to housing and urban development "in a manner affirmatively to further the policies" of the law. It gives HUD the responsibility for securing agency cooperation in this regard.[6] Under Title VI, HUD has the duty to ensure nondiscrimination in programs and activities for which it supplies financial assistance.

III. ENFORCEMENT MECHANISMS

A. Equal Opportunity Standards for HUD Programs

During the last year HUD has undertaken a new and worthwhile approach toward administering its assistance programs to further Title VIII and to assure compliance with Title VI prior to HUD approval of assistance.[7] It has issued new equal opportunity regulations and requirements for reviewing applications for HUD funds.[8] Their specific purpose is ensuring that HUD assistance is used to further housing options for minorities and low- and moderate-income families by increasing opportunities outside existing areas of minority and poverty concentration.

1. Housing Project Selection Criteria

In January 1972, HUD issued a set of eight criteria to be used by program staff in rating applications for participation in HUD's subsidized housing programs.[9] Four criteria concern opportunities for minorities and low-income families.[10] Thus, the objective is to ensure that subsidized and public housing projects are constructed on locations outside areas of existing minority and poverty concentration. The proposed project must: (1) serve urgent unmet needs for low-income housing; (2) widen the range of housing locations available to minority families; (3) not contribute to the concentration of subsidized housing in any one section of a metropolitan area; and (4) have potential for creating minority employment and business opportunities. Proposed projects must attain a "superior" or an "adequate" rating on each criterion in order to be approved.

While the content of the criteria is generally adequate, HUD's approach to implementation reduces their effectiveness. One problem is that HUD program staff is instructed to evaluate each proposal upon receipt. This limits the possibilities for comparing proposals within a given metropolitan area. It thus fails to ensure that only the best will receive superior ratings and that the aggregate of proposals accepted in a particular metropolitan area will further the options for low- and moderate-income families on an areawide basis.[11] Since applications are funded periodically, HUD should be able to consider groups of proposals simultaneously.[12]

In the absence of comparative evaluations, HUD approval of sites for subsidized housing can be haphazard. In fact, HUD has not instituted any overall planning system for selecting subsidized housing sites within metropolitan areas.[13]

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[1] In Fiscal Year 1972, HUD's housing program and housing management appropriation was estimated at $2.7 billion. In addition, an estimated $19.7 billion of housing insurance was written.

[2] Its Fiscal Year 1972 estimated appropriation for community planning was $1.8 million and for community development was about $900 million.

[3] Other major areas of responsibility which will not be treated here are equal employment opportunity, contract compliance, and minority entrepreneurship.

[4] Executive Order 11063, issued in 1962, also requires nondiscrimination in the sale and rental of federally subsidized or insured housing.

[5] More than 80 percent of the Nation's housing is estimated to be covered by Title VIII.

[6] Title VIII requires HUD to make studies and disseminate reports with respect to the nature and extent of discriminatory housing practices. It also requires HUD to cooperate with and give technical assistance to State, local, and other public and private agencies regarding programs to prevent and eliminate housing discrimination.

[7] HUD is the only Federal agency that has taken the important step of integrating equal opportunity requirements on a wide scale in its standards for distributing assistance. While essential to the success of the HUD equal housing opportunity effort, these regulations cannot be relied upon as the principal mechanism for effecting compliance with either Title VIII or Title VI. They apply only to HUD programs, while Title VIII applies to most housing. The regulations are directed only at achieving equal housing opportunity, although Title VI requires nondiscrimination in all areas of Federal assistance.

[8] They apply to builders and sponsors; e.g., nonprofit groups which submit proposals for funds and insurance under major HUD housing programs, and local, regional, and State agencies applying for community planning and development grants and loans. The requirements must be met before an application is approved.

[9] They apply to four programs: homeownership for low-income families, subsidized multifamily housing, rent supplement projects, and low-rent public housing. Builders, developers, and sponsors requesting that HUD reserve funds for subsidized housing projects and housing authorities seeking feasibility approval for low-rent public housing projects must meet the criteria.

[10] The objectives of the other four criteria are that the project be consistent with principles of orderly growth and development in an area; that it have a positive environmental impact; that the developer be able to produce quality housing promptly and at reasonable cost; and that, for rental projects, there be suitable provisions for sound housing management.

[11] A comparative evaluation of current proposals within a given metropolitan area should contribute to the ratings which are assigned to particular proposals. Currently HUD instructs field staff to group proposals together only after the ratings have been assigned, to ensure that the ratings are used in determining priorities for funding. This does not contribute to the development of a systematic plan for areawide funding.

[12] This is possible because HUD appropriations are allocated to field offices on a periodic basis.

A further difficulty in implementing these regulations is that HUD allows field offices wide discretion in determining the market areas; i.e., geographic boundaries for their evaluations. Although instructions to field offices stipulate that the market area must be large enough to encompass more than one proposed project, there is no requirement that the entire metropolitan area be considered. Hence the objectives of the project selection criteria are undermined. When HUD approval of project sites is not based on analysis of the entire metropolitan area, the range of housing locations available to minority and lower-income families is narrowed.

HUD fails to outline an adequate role for the equal opportunity staff in administering these new regulations.[14] Although the civil rights implications of the regulations are unfamiliar to program staff, equal opportunity staff members have not been required to monitor the approval process systematically. Equal opportunity staff have conducted no widespread reviews or evaluation to determine the impact of the new regulations, or whether the regulations are being properly implemented by HUD staff.

2. Affirmative Fair Housing Marketing Regulations

Another promising step is the issuance of HUD's affirmative marketing regulations in January 1972. They require builders, developers, and sponsors applying for participation in all HUD-assisted housing programs [15] to "pursue affirmative fair housing marketing policies in soliciting buyers and tenants, in determining their eligiblity,[16] and in concluding sales and rental transactions." Before an application is approved, the applicant must submit an affirmative marketing plan [17] which meets HUD's standards. Compliance with plans is monitored by equal opportunity staff.[18]

A major weakness of the regulations is that they do not apply to existing FHA-insured or -subsidized projects,[19] even though racial and ethnic data collected on existing subsidized, multifamily units show extensive segregation. Further, the regulations cover only the builder's projects and subdivisions developed under FHA programs. Builders participating in HUD programs thus are not required to market all their housing affirmatively.

To date, HUD has made no widespread evaluation of the quality of affirmative marketing plans submitted by applicants. Although HUD believes builders and field office personnel are "generally working cooperatively in developing acceptable plans," concrete evidence is unavailable.

3. Workable Program for Community Improvement

Communities applying for urban renewal and related community development grants and loans must first file a workable program for certification.[20] New requirements for certification were added in December 1971, stipulating that a locality submit a program both for expanding the supply of low- and moderate-income housing and for eliminating practices and policies, including exclusionary zoning, which restrict that expansion. In additon, the community must present a plan to eliminate discrimination in the housing market as a whole.

The workable program must be recertified every two years, and is subject to midterm reviews. Under HUD instructions, a locality failing to comply with its plans will not be recertified until it does so. The locality cannot receive program funds while in noncompliance. The regulations offer important leverage in furthering equal housing opportunities, but it is too early to know how stringently they will be applied.

4. Selection Systems for Community Development Programs

During the past 18 months HUD developed new selection systems for funding community development programs.[21] Like the project selection criteria, the purpose of these selection systems is to assure that applicants [22] for HUD funds are making efforts to expand housing opportunities for minorities and low-income families.

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[13] HUD has begun the development of maps which will display locations of existing HUD projects. These maps may serve as a useful tool in overall planning, but it is not known when they will be available.

[14] This failure holds true for the majority of HUD's new program standards. Involvement of equal opportunity staff is limited to such responsibilities as assistance in the design of implementation instructions. An exception to this shortcoming is the affirmative marketing regulations, which require personal evaluation and monitoring by equal opportunity staff or a designee.

[15] HUD's Federal Housing Administration (FHA) first determines "feasibility" for the proposed project, based on a review of such items as cost, location, and water and sewage facilities. A builder is then eligible for conditional commitment of funds. Lending institutions often require FHA feasibility approval before financing builders.

[16] Such eligibility criteria as credit ratings and personal reference may not be used in a discriminatory manner.

[17] Such a plan might include programs for publicizing the availability of units to minorities and specifically recruiting buyers and tenants, for minority hiring, and for educating the builder's own staff on fair housing responsibilities.

[18] For rental projects, monitoring continues throughout the life of the mortgage. In subdivisions, the plan applies only to the initial sale.

[19] HUD has stated that it intends to study the impact of the regulations on the racial composition of new projects before determining whether to apply them to existing housing. Since many of the projects are not yet occupied, no complete evaulation of the effect of the regulations has been possible.

[20] Certification is an indication that the community has adequate codes and code enforcement and has established a planning program, a housing program, a relocation program, and a program for citizen involvement.

Applicants for all but one of the programs must take significant steps to expand low- and moderate-income housing on a nondiscriminatory basis.[23] The regulations contain no prerequisite, however, that there be efforts to end discrimination in the total housing market.[24] The exception is the program for water and sewer grants, which has no fair housing requirement in the prerequisite for expanding low- and moderate-income housing.[25]

5. Planning Requirements

Since March 1972, HUD's major planning program, comprehensive planning assistance,[26] has required that recipients develop and implement a "housing work program" [27] which includes the goals of eliminating the effects of past discrimination and providing safeguards for the future. HUD suggests, to both its recipients and its field staff, comprehensive activities for implementing these new requirements. None of these activities is mandatory, however, and HUD has issued no definitive standards for assessing the recipients' achievements.

6. Tenant Selection Criteria

Although HUD has stated repeatedly that it intends to issue new tenant selection criteria [28] for all subsidized rental housing, it has not yet done so. HUD indicates that it has delayed publication of the criteria partly because the field staff is not equipped for the massive undertaking of administering such important new regulations.[29] This does not appear to be a valid reason. Public housing authorities are important subjects for regular Title VI compliance reviews, which emphasize such matters as tenant selection plans.

B. Compliance Mechanisms

HUD uses three major tools to obtain compliance with Title VIII and Title VI:[30] processing complaints, conducting compliance reviews, and developing affirmative action programs to achieve voluntary compliance. HUD has integrated its compliance programs under the two statutes, but the relative emphasis on compliance tools varies for each statute.

1. Fair Housing Activities (Title VIII)

a. *Complaints* [31]

A major weakness in HUD's effort to prevent and eliminate housing discrimination is that the effort continues to be centered largely on processing complaints. This is an extremely limited approach to enforcement for two reasons.

First, the complaint inflow has been relatively small. As a result of a 1971 advertising and publicity campaign to increase public awareness and understanding of Title VIII, more than 2,100 complaints were received in Fiscal Year 1972,[32] nearly double the number filed during the preceding year. HUD also commemorated the fourth anniversary of the Fair Housing Law in April 1972 with a month of activities aimed at increasing public knowledge of, and support for, equal housing opportunity and the Administration's policies. The number of complaints received, however, continues to provide an inadequate basis for a comprehensive compliance program.

Second, HUD complaint processing has been slow and has had minimal results, partly because of the inefficiency of State and local fair housing agencies. HUD referred 1,057 complaints to State and local agencies in Fiscal Year 1972.[33] Investigations were completed in only 164 of those cases. Successful conciliations were achieved in only 47 of those cases, and 372 complaints were recalled by HUD. In August 1972, new regulations were published setting standards for HUD recognition of "substantially equivalent" State and local fair housing laws. The regulations require that a fair housing agency demonstrate competent performance in the administration of its law before the agency may handle complaints referred by HUD. The performance standards require timely complaint processing.

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[21] A selection system for water and sewer grants was issued in June 1971. Systems for grants for neighborhood development, neighborhood facilities, and open space, and for loans for public facilities, were issued in April 1972. Thus, the major community development grant programs are covered.

[22] Applicants for community development grants include local public agencies and communities.

[23] Further, if the applicant is a local public agency, such steps must also be taken by the community in which the agency is located. Applicants for each of the programs must also demonstrate that they are undertaking adequate minority entrepreneurship efforts. All applicants, except those for water and sewer grants, must engage in equal employment opportunity endeavors. There are several other prerequisites, depending on the program involved. The applicant must demonstrate adequate provision for local coordination, positive impact on redevelopment and environmental efforts, and commitment by State, local, and Federal entities to the project or program. Points are awarded for certain achievements in each area.

[24] This prerequisite should include requirements for a local fair housing law, a human relations commission, and concrete enforcement efforts.

[25] It is of particular importance that regulations for evaluation of water and sewer applications, as well as other development programs such as open space, have equal housing opportunity requirements. Communities which apply for such programs often lack fair housing legislation and often have exclusionary land-use policies.

[26] Recipients include States, cities, and regional or metropolitan planning agencies. The purpose of the program is to assist communities in planning for community development and for urban and rural growth and to encourage them to develop appropriate management capabilities.

[27] The purpose of the housing work program is to assure that housing problems and needs are an integral part of the community planning and management processes.

[28] Regulations should provide for a centralized tenant selection process; e.g., a combined waiting list for all subsidized rental housing. Current regulations apply only to low-rent public housing, and a prospective tenant must accept one of three alternatives or revert to the bottom of the waiting list. The present criteria have failed to reduce segregated occupancy.

[29] In contrast, however, HUD has issued many other equal opportunity regulations without adequate staff to do exhaustive monitoring.

[30] Compliance activities under Executive Order 11063 have been very limited because of overlapping jurisdictions. Most violations have been handled under the two statutes.

[31] Conciliation is the only tool provided under Title VIII for correcting instances of noncompliance with that title. HUD has no enforcement powers; i.e., it cannot assign penalties for noncompliance. Findings of noncompliance which cannot be resolved can be referred to the Department of Justice for prosecution.

[32] Compared, for example, with the number of employment complaints received by EEOC (34,840 in Fiscal Year 1972), this is not a large number. HUD's low volume of complaints may result from continued public ignorance of the law and its remedies, and the red tape involved in filing a complaint with HUD.

In Fiscal Year 1972, HUD itself handled at least 1,474 complaints.[34] Of these, 1,236 were closed, including 130 unsuccessful, 14 partially successful, and only 227 successful conciliations.[35] Thus, 238 or more cases are still pending. It takes HUD an average of five and one-half months to process a complaint, and sometimes there is a delay after investigation in initiating the conciliatory process. As a result of a study of Title VIII complaints conciliated in Fiscal Year 1971, HUD is developing a short-form processing procedure for cases involving rental housing. So far, however, it has been tried only in one region and is not ready for nationwide implementation.

B. Compliance Reviews

The greatest deficiency in HUD's compliance program is HUD's failure to conduct any compliance reviews under Title VIII. Conducted systematically, such reviews would have greater potential impact on discriminatory practices than complaint investigations and conciliation. HUD has mentioned the necessity for communitywide investigations to identify patterns of housing discrimination but has indicated only vague plans for utilizing this important tool:[36] it plans to conduct citywide reviews sometime in the future for total equal opportunity compliance in housing and housing programs.

Further, HUD argues that in the absence of direct evidence of discrimination or noncompliance with HUD regulations, it lacks the authority to conduct Title VIII compliance reviews. This appears to be an unduly restrictive interpretation of HUD's otherwise broad authority under Title VIII. Moreover, even if one agrees with this position, compliance reviews would have been appropriate at least in conjunction with the 371 attempts at complaint conciliation in Fiscal Year 1972.

Compliance staff should also conduct reviews of builders' affirmative marketing plans to determine if they are complying with the plans,[37] and of their advertisements for adherence to fair housing guidelines.

HUD is not adequately prepared to make frequent use of Title VIII reviews. There are no step-by-step procedures for conducting Title VIII compliance reviews along the lines of Title VI and Executive Order 11246 reviews.

HUD has indicated that it will issue proposed regulations for public hearings for the promotion and assurance of equal opportunity.[38] Despite the distinct differences between public hearings and compliance reviews, these hearings are considered by HUD officials to be an alternative to compliance reviews.[39] There is no indication when the regulations will be issued in final form.

C. Voluntary Compliance

HUD recently embarked upon a new approach to further the policies of Title VIII. In addition to its reliance on complaint processing, it has begun to take affirmative action aimed at securing voluntary compliance with Title VIII.[40] Builders, developers, and real estate brokers, whether or not involved in HUD programs, have been required since February 1972 to display prominently a standardized HUD fair housing poster in their places of business. HUD also recently issued advertising guidelines, which include suggestions for use of HUD's equal housing opportunity logotype and for avoiding phrases or catch words which might be used in a discriminatory manner.

In April 1972, HUD established an Office of Voluntary Compliance within the Office of the Assistant Secretary for Equal Opportunity. One of the Office's projects is to negotiate across-the-board affirmative action programs with homebuilders who have a nationwide business.[41] It has also begun to meet with some of the national trade organizations in the real estate industry. At this time, the Office's plans have only begun to take shape and it is too early to assess their impact.[42]

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[33] Title VIII requires that a State with fair housing laws "substantially equivalent" to Title VIII be given 30 days to commence proceedings for the resolution of any complaints arising in that State and referred to that agency by HUD. After that time, complaints must be recalled by HUD.

[34] This figure includes those recalled from State agencies. HUD did not indicate the number of complaints handled in Fiscal Year 1972 which were received prior to that time.

[35] Many of the other cases were either withdrawn or dismissed for lack of evidence.

[36] This type of review should include both an analysis of census and other data on racial composition to assess residential patterns of segregation, and an examination of the policies and practices of members of the real estate industry in contributing to those patterns.

[37] Such reviews should examine policies and practices in the sale or rental of *all* of a builder's housing, whether or not federally assisted.

[38] The proposed regulations for public hearings do not set forth the steps necessary for determining compliance with Title VIII. They are addressed principally to the technical procedures involved in holding hearings, such as the right to legal counsel.

[39] Title VIII hearings and compliance reviews should be treated as complementary tools. The purpose of a hearing is to provide public exposure to discriminatory conditions; a compliance review, on the other hand, can lead to negotiations to effect compliance with the Fair Housing Law.

[40] The Under Secretary's Memorandum of May 1972 established equal opportunity goals for area and FHA insuring offices with regard to achieving voluntary compliance. These include the development of systematic affirmative action programs (outside of program standards) designed to expand minority housing options, and the provision of assistance to the minority community and the real estate industry in the expansion of housing options.

2. Equal Opportunity Compliance in HUD Programs (Title VI)[43]

In conducting compliance activities under Title VI[44] HUD places greater emphasis on compliance reviews than on handling complaints. In fact, HUD received fewer than 400 complaints in Fiscal Year 1972.[45]

One hundred eighty-six onsite, postaward Title VI compliance reviews were conducted by HUD during Fiscal Year 1972,[46] an increase of about 60 from the previous year. This represents only a small percentage of the recipients who must be reviewed.[47] The average number of reviews conducted by each regional office[48] for the entire year was only 18.6. Workload assignments pertaining to compliance reviews to be undertaken by each regional office have not, in general, been set forth by the Assistant Secretary. Workload assignments should be based on analysis of conditions in the region[49] and should require that all recipients be reviewed once during a specific time period; e.g., once every five years.

The *Title VI Handbook* contains checklists for compliance reviews of housing authorities, urban renewal and relocation agencies, and community development agencies. A large number of recipients, however, are not covered by these checklists. For example, the *Handbook* fails to include checklists for reviews of developers, builders, and sponsors of subsidized housing. The checklists appear quite thorough, although some of the investigative reports treat items on these checklists very generally.

While 70 manhours are spent on an average review, the period between initiation of a review and completion of an investigative report varies from three months to almost a year. HUD's greatest failing in its enforcement of Title VI, however, is that it has not used its authority to the fullest extent. When a recipient is found in noncompliance, HUD's actions are directed almost exclusively toward achieving voluntary compliance. Although it has the power to defer funding until compliance is obtained, HUD estimates that only 13 "deferral status" letters were issued during 1972.[50] HUD has never terminated funding when actual discrimination was found.[51] Rather, it allows recipients to remain in noncompliance, relying on negotiations in an effort to obtain compliance through voluntary action.

Negotiations following a compliance review may stimulate recipient affirmative action. Apart from that, HUD has no formal mechanism for encouraging recipients to take affirmative action to further the purpose of Title VI.[52]

C. Racial and Ethnic Data

Although HUD has been collecting racial and ethnic data in its housing programs for well over a year, complete tabulations are not yet available.[53] HUD now anticipates publication of data on single-family housing programs by the end of 1972.[54] HUD says that except for data on public housing, which have been collected since that program's inception, data on multifamily housing programs are incomplete and invalid for meaningful analysis.[55] Comprehensive racial and ethnic data are not collected on participants [56] in HUD community development programs, except in conjunction with relocation.

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[41] It is hoped that these plans will cover marketing, site and project development, jobs, and minority entrepreneurship.

[42] Among these plans are (a) increasing cooperation between area office directors, communities, and regional planning groups to develop such things as "fair share" plans to disperse lower-income housing; and (b) initiating areawide affirmative marketing agreements among apartment owners.

[43] The Assistant Secretary for Equal Opportunity was formally delegated authority for enforcing Title VI in May 1971. For seven years before that, Title VI compliance was the responsibility of program staff. In September 1971, the Equal Opportunity Office issued a handbook containing instructions for handling complaints and conducting compliance reviews under Title VI.

[44] Complaint handling and compliance reviews under the authority of Executive Order 11063 have been given very little emphasis but, so far, have followed Title VI guidelines. In June 1972, however, the Assistant Secretary for Equal Opportunity was formally delegated authority for administering the Executive order. Thus, compliance with Executive Order 11063 may no longer be handled under Title VI authority, and HUD has no regulations for undertaking separate compliance activities.

[45] Voluntary compliance was achieved in only 57 cases. HUD does not indicate the status of the remaining 337 cases.

[46] HUD does state that 6,600 preapproval application reviews and, at a minimum, 100 preaward onsite reviews were also conducted. The conduct of these reviews does not obviate the need for postaward reviews on a regular basis.

[47] There are approximately 12,000 locally funded agencies subject to review under Title VI. In addition, there are developers, builders, and sponsors of HUD-assisted housing subject to review under both Title VI and Executive Order 11063. HUD does not estimate how many.

[48] All direct compliance activities are handled by equal opportunity staff in the regional offices. Preapproval application reviews are handled by area and FHA insuring offices within each region, as part of the funding process.

[49] These conditions, such as the number of HUD recipients and racial and ethnic occupancy patterns, should be further defined in the *Title VI Handbook*.

[50] HUD found that 139 recipients would be in noncompliance unless immediate corrective actions were taken.

[51] Its only use of its enforcement authority occurred with regard to the debarment of public housing authorities which failed to submit acceptable tenant selection and assignment plans prior to 1970.

[52] Such action might include increasing publicity directed at minorities about eligibilty for public housing and other HUD-assisted benefits and using bilingual staff to assist non-English speaking beneficiaries and potential beneficiaries.

[53] In October 1971, HUD expected that data on all programs would be collected by early 1972.

[54] These data will include the race and ethnic origin of rejected applicants for mortgage insurance, mortgagors for whom firm commitments have been issued, and mortgagors who have been endorsed for insurance. Apparently the rejected applicants include only those who have been rejected by HUD, and not those who have been rejected by banks.

HUD data analysis is restricted by the absence of meaningful comparison data. For example, HUD does not collect data on the racial and ethnic composition of neighborhoods in which single-family housing sales are made, and data are not collected on the racial and ethnic composition of the population for whom HUD's programs are targeted.

A further serious weakness is that housing data will be available only by Standard Metropolitan Statistical Area (SMSA) and county. They will not be tabulated for smaller areas, such as cities or communities, greatly limiting their utility.[57] This may be mitigated, to some extent, by the fact that the affirmative marketing plans now required of builders and developers include racial and ethnic data by subdivision and project—data which could be useful in detecting residential patterns of segregation.

To assist in overall planning of HUD projects, HUD plans to map 268 metropolitan areas to show areas of racial and ethnic concentration.[58] It is not known when these maps will be completed. When available, they will provide important planning tools. They will be made available to the public—as will subdivision data and SMSA and county tabulations of mortgage insurance data.

Except for these maps, HUD data collection and use is restricted to statistics on participants in HUD programs. HUD does not regularly collect data on private housing and does not make systematic use of census data to survey the Nation's housing patterns.[59]

D. Coordination with Other Federal Agencies

In the four years since HUD was assigned responsibility for providing fair housing leadership to Federal agencies, it has undertaken only a few formal coordinating activities.[60] It recently called for formation of a committee of Federal agency representatives to develop an affirmative fair housing program for Federal agencies. Although it has not yet developed a long-range agenda, this committee has important potential for increasing Federal agencies' awareness of their fair housing responsibilities. For the first meeting, agencies were requested to provide the Assistant Secretary for Equal Opportunity with the status of actions taken to implement the President's equal housing opportunity message of June 1971.

1. General Services Administration (GSA)

Under the HUD–GSA Memorandum of Understanding,[61] HUD is responsible for reporting to GSA on low- and moderate-income housing available on a nondiscriminatory basis in the vicinity of proposed Federal facilities. In the event that GSA selects a site or executes a lease where the availability of such housing is inadequate, HUD has agreed to cooperate with GSA in the development and monitoring of an affirmative action plan to remedy the situation.

For several months after the agreement was signed, there was no indication that either HUD or GSA was directing activities toward strict compliance with the agreement.[62] Procedures implementing the agreement were not issued by the two agencies in final form until June 1972, a year after the agreement was signed. HUD states that as a result the investigations undertaken by its staff during that year differed widely in scope. HUD is developing a handbook of instructions for conducting the reviews. Until it is completed, the reviews may continue to be of uneven quality.

The implementing procedures contain one major improvement over the agreement itself. They make it clear that the fair housing actions of the two agencies should not be restricted to low- and moderate-income housing, but should be extended to all housing.

Nevertheless, the procedures are insufficient. For example, they limit the applicability of the agreement to leases or new construction involving 100 or more low- or moderate-income employees. In the case of lease actions, the agreement generally applies only to those actions necessitating residential relocation of a majority of the existing low- and moderate-income employees.[63] Most agency relocations administered by GSA do not fall in these categories. The restrictions thus prevent full use of the agreement to correct housing deficiencies.

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[55] Builders, developers, and sponsors are now required to submit racial and ethnic occupancy data in conjunction with affirmatative marketing plans. In the future, this should substantially improve HUD's data on its multifamily housing programs.

[56] Such participants include, for example, users of recreational facilities and community centers.

[57] Thus, the data cannot be used to measure residential patterns of segregation. For example, HUD will not be able to compare the racial and ethnic origins of purchasers of subsidized, single-family homes in a city with those of purchasers in the nearby suburbs. As tabulated now, data will be useful primarily for measuring the rate of minority participation in HUD programs by SMSA and county.

[58] These maps also will display the locations of HUD-subsidized projects and the boundaries of all HUD-assisted projects. The principal rationale for these maps is to assist HUD field staff in making determinations regarding project selection criteria.

[59] A city-by-city analysis of racial and ethnic patterns in housing could serve to determine priorities in selecting cities most in need of HUD review. Such analysis, if made public, could also be useful to local groups interested in bringing about reform in equal housing opportunity.

[60] HUD is assisting the Environmental Protection Agency (EPA) in a study of the possible impact of exclusionary zoning on minority participation in EPA programs. Also, HUD has discussed with the Department of Transportation (DOT) a proposed DOT regulation which would require State highway departments to analyze the impact of proposed highway projects on minority housing. For a fuller discussion of these matters, see sections on the Environmental Protection Agency and the Department of Transportation-Federal Highway Administration.

[61] For further discussion of this agreement, see the section on GSA housing activities, elsewhere in this enforcement report.

[62] For example, in a fall 1971 review of housing in Las Cruces, N. Mex., the HUD report did not mention the extent of discriminatory housing conditions.

Since HUD does not yet regularly conduct Title VIII compliance reviews, the reviews mandated under the HUD–GSA agreement could be used by HUD to determine Title VIII compliance on the part of the housing industry and State and local governments. Even if HUD had an adequate program for compliance review, reviews under the HUD–GSA agreement would produce additional information on the status of fair housing in particular communities,[64] and would supply leverage for furthering fair housing. Overall, however, the severe restrictions placed upon the applicability of the agreement[65] have negated the possibility of using it as a major tool for accomplishing Title VIII compliance.[66]

2. Federal Financial Regulatory Agencies[67]

In June 1971, the financial regulatory agencies, in conjunction with HUD, sent out a questionnaire to lending institutions concerning mortgage lending policies which affect minorities. HUD has completed a preliminary analysis of the responses and has made recommendations to the regulatory agencies. HUD does not have definite plans to conduct a more comprehensive analysis, although more detailed information on discriminatory lending practices is needed.

The preliminary analysis, although general, clearly indicates evidence of discrimination by mortgage lenders. The analysis points to the necessity for lenders to maintain racial and ethnic data on all loan applications, accepted and rejected, and data on neighborhood racial composition. HUD equal opportunity staff members continue to meet with the regulatory agencies to encourage the development of a total affirmative action program. Those agencies have not yet required lending institutions to collect the necessary data.

IV. ORGANIZATION AND STAFFING

A. Organization

During the past year, as a result both of the increase in responsibilities assumed by the Equal Opportunity Office and of the spectre of a Department-wide reduction in force, the Equal Opportunity Office conducted a much needed management study of its procedures and structure. Among the principal conclusions of this evaluation was that HUD was not achieving maximum leverage in its attempt to improve equal housing opportunity. In particular, HUD was not taking full advantage of the overlapping jurisdiction between Title VI and Title VIII.[68] Moreover, HUD's concentration on complaint investigations, rather than on instituting a broad program for affirmative action, did not fill its mandate to provide safeguards against future discrimination. Finally, HUD did not provide sufficient oversight of and support to, field activity.

1. The Washington Office[69]

Consequently, in April 1972, HUD reorganized to create four offices within the Office of the Assistant Secretary for Equal Opportunity, each responsible to the Assistant Secretary and his personal staff.[70] In one of these offices, the Office of Compliance and Enforcement,[71] Title VI and Title VIII compliance activities were consolidated. A second office, Voluntary Compliance, was formed to conduct such efforts as the development of broad-scale affirmative action plans to promote equal housing opportunity activity by State and local agencies and all sectors of the real estate industry. The third, the Office of Program Standards and Data Analysis, was created to carry out programs in line with HUD's recent emphasis on the development of program standards and on systematizing collection and use of racial and ethnic data. The fourth office, Management and Field Coordination, was made responsible for field staff training and technical assistance.[73]

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[63] No such restrictions are contained in the original agreement, which applies to all GSA lease and construction activity. Because of the great volume of this activity (approximately 1,500 leases, about 30 site acquisitions, and approximately 25 project development investigations annually), these restrictions were included in the procedures as a means of decreasing the workload. By virtue of its responsibility to conduct the reviews mandated by the agreement, the volume of GSA activity places the heaviest burden upon HUD.

[64] It is important that such information be made available to minority group organizations and other private groups interested in improving fair housing opportunities.

[65] Even without the limiting procedures, the agreement was applied during the past year only to approximately 18 project development investigations, 20 site investigations, and 22 lease actions.

[66] Nonetheless, HUD so far has taken a broader view of its fair housing responsibilities under the agreement than has GSA. In an investigation of Baltimore County, Md., conducted pursuant to the agreement, HUD determined that there was a dual housing market and insufficient low- and moderate-income housing. HUD encouraged use of the agreement to correct these deficiencies. GSA, on the other hand, was satisfied that adequate housing was available within proximity to the county, in the city of Baltimore. Neglecting the leverage for fair housing enforcement which is made available by the agreement, GSA approved the site.

[67] The fair housing activities of these agencies are discussed in greater detail in the section on the Federal Financial Regulatory Agencies.

[68] For example, if a developer participating in a HUD program is charged under Title VIII with housing discrimination, HUD has the option of using either its Title VI or its Title VIII authority. Prior to reorganization, HUD's internal structure did not provide any coordination between these two statutes.

[69] The central office is responsible for development of policy regulations and instructions, and for oversight of all field offices.

[70] These offices are responsible for all HUD civil rights activity. Although each has functions related to the execution of Title VI and Title VIII, they also share duties in the areas of minority entrepreneurship, equal employment, and contract compliance.

[71] This office is responsible for developing compliance standards and for overseeing and evaulating staff performance in handling compliance reviews and complaints. Since the reorganization, however, this office has made no special effort to ensure that all field staff are fully conversant with the requirements and standards attached to their new responsibilities for enforcing Title VI. The office collects monthly summaries from all regional offices on the status of complaint investigations and compliance reviews. A serious error is that it does not forward—or require that the regional offices forward—specific information on the compliance standing of HUD recipients to the area and FHA insuring offices. This office could use this information in reviewing applications for HUD funding.

In reorganizing its central office, HUD appears to have recognized the need for more effective fair housing enforcement and for widespread affirmative action to promote equal housing opportunity. Equal opportunity staff members are still gearing up for their recently assumed responsibilities, and it is too early to determine the effectiveness of the new structure.

2. The Field Offices

HUD has three field office levels: regional, area, and FHA insuring offices. Although HUD anticipates the assignment of equal opportunity staff to the FHA insuring offices, currently only regional and area offices have specific units for equal opportunity functions.

The 10 regional offices handle all equal opportunity complaints and conduct all compliance reviews. They train and evaluate area and FHA insuring offices. Within regional offices there has been reorganization parallel to that in the Washington office. The reorganization consolidates Title VI and Title VIII compliance activity and adds the responsibility of monitoring equal opportunity activities of the area and insuring offices.

Under the regional offices, there are 39 area offices which have direct funding responsibility for HUD programs in their areas. Equal opportunity personnel in these offices are responsible for reviewing affirmative marketing plans submitted by builders and sponsors of HUD-assisted housing, and for overseeing the implementation of other equal opportunity standards by HUD's program staff. Among their other functions is the monitoring of local advertising media for correct use of HUD's housing guidelines.

The FHA insuring offices process applications for participation in FHA programs and are thus responsible for implementing equal opportunity standards for housing programs. They are responsible to the area offices.

B. Staffing

The Office of the Assistant Secretary for Equal Opportunity has long been hampered by inadequate staff for meeting its fair housing responsibilities and ensuring nondiscrimination in HUD's programs of assistance. During the past year, when HUD greatly increased the scope of its activities, the staffing problem has become more critical.

Despite requests for additional staffing, HUD had only 347 positions allocated for civil rights in Fiscal Year 1972,[74] and about 43 percent of staff time was allocated for activities other than fair housing and nondiscrimination in HUD programs.[75] Seventy-two positions are assigned to the central office, 134 to regional offices, and 141 to area offices. The FHA insuring offices have no equal opportunity staff.

For Fiscal Year 1973, 80 new positions are requested.[76] Of the anticipated 427 positions, 77 will be assigned to the central office, 128 to regional offices, 147 to area offices, and 75 to the FHA insuring offices.[77]

While new positions will increase HUD's ability to improve the fair housing efforts of its program participants, they will provide no additional staff for the already overextended regional programs for compliance review and complaint processing. Overall, the increase in staffing provides only a small portion of what is necessary for adequate staffing of HUD's Equal Opportunity Office.

C. Training

HUD's many new equal opportunity regulations, the consolidation of its compliance staff, and the addition of equal opportunity staff to the FHA insuring offices accentuate the need for periodic and concentrated training of HUD's equal opportunity staff.[78] HUD has assigned responsibility for developing and administering training and technical assistance to its recently created Office of Management

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[72] These functions are executed by its Division of Field Coordination. Its Division of Budget and Management is responsible for administrative functions, including personnel and budget.

[73] HUD also has added three special coordinators: for women, the Spanish speaking, and American Indians. The coordinators, all employed at the GS-15 level in the Office of the Assistant Secretary, are responsible for recommending policy and initiating special research projects. They have no staff.

[74] HUD requested 407 positions for Fiscal Year 1971 and received 324. It requested 395 positions for Fiscal Year 1972.

[75] These activities included contract compliance, minority entrepreneurship, and internal equal employment opportunity.

[76] If the HUD budget is approved, an average of 7.9 equal opportunity positions will be assigned to each regional office, 3.8 to each area office, and 1.8 to each FHA insuring office.

[77] HUD has not yet made final decisions concerning the functions and structure of the equal opportunity staff in FHA insuring offices. These staff members should be responsible for administering HUD equal opportunity standards. In order to have sufficient authority to execute this function, they should be responsible directly to the area office directors.

[78] There is a particular need for extended evaluation and training of equal opportunity staff for Title VI responsibilities, since Title VI enforcement is a relatively new assignment. Many staff members are unfamiliar with Title VI procedures and the programs Title VI covers.

and Field Coordination.[79] This Office also is charged with evaluating staff performance to determine where further training is necessary.[80] Other sections of the Equal Opportunity Office provide expertise in such areas as methodology for compliance review, development of affirmative action plans, and implementation of program standards.

Previous equal opportunity training was *ad hoc* but HUD currently is attempting to develop a regular program of training for all staff members. In June, a week-long training conference was held for regional equal opportunity staff. A series of similar conferences in the regions is being held to train equal opportunity staff in area and FHA insuring offices.

The rate at which HUD is training its equal opportunity staff is, however, too slow. Training was provided to equal opportunity staff for area and FHA[81] insuring offices in one region at a conference in June, and the second regional conference will not be held until this fall.[82] Thus, several months after the reorganization assigned them new duties, staff members in eight regions will have received little or no training.

A further weakness thus far is that training has been directed solely at equal opportunity staff, although program personnel are responsible for applying most of the new equal opportunity standards for HUD programs. HUD has not indicated that it plans fair housing training for program staff on a systematic basis.

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[79] For example, the Office's Division of Field Coordination has developed video tapes for use in sensitizing staff to the special problems of American Indians and Spanish speaking, familiarizing staff with the procedures for racial and ethnic data collection, and conveying to staff members their responsibilities under the HUD-GSA agreement.

[80] The Office also devises yearly checklists for regional staffs to determine whether they are meeting their objectives. Division of Field Coordination personnel spend about half their time in the field.

[81] This conference was held in Atlanta. It provided training in the operation of HUD assistance programs to facilitate fair housing activity with regard to those programs. The conference also included sessions on the mechanisms for fair housing compliance and enforcement.

[82] The second regional conference is to be held in Philadelphia.

GENERAL SERVICES ADMINISTRATION (GSA)

I. OVERVIEW

The chief accomplishment of GSA's fair housing effort during the past year has been the much delayed publication of procedures for implementing a recent agreement between GSA and the Department of Housing and Urban Development (HUD). Nevertheless, the procedures are highly inadequate for ensuring fair housing in communities with Federal facilities.

GSA has not acknowledged the complete scope of its fair housing responsibilities. It does not use its full authority to promote increased attention to fair housing by other Federal agencies and by communities in which Federal agencies are locating. It does not review its own actions to make certain that they have resulted in adequate low- and moderate-income and nondiscriminatory housing for relocated Federal employees.

GSA lacks a full-time director and staff to oversee its fair housing efforts. To the extent that GSA staff members have fair housing responsibilities, it is only as a minor assignment in conjunction with their regular functions. GSA fails to provide civil rights training for carrying out assignments related to equal housing opportunity.

In short, GSA has an inadequate program for securing equal housing opportunities for Federal employees and for guaranteeing that the process of obtaining space for Federal agencies does not serve to exacerbate existing discriminatory housing patterns.

II. PROGRAM AND CIVIL RIGHTS RESPONSIBILITIES

By virtue of its role as the Federal real estate broker, GSA has a special obligation to provide leadership in fair housing.[1] This responsibility is enunciated in an agreement between GSA and HUD which states that GSA "will pursue the achievement of low- and moderate-income and fair housing objectives."[2] Specifically, GSA agreed to provide HUD with notice of project development investigations, site investigations, and lease actions,[3] and to consider HUD's ensuing reports on the availability of low- and moderate-income housing on a nondiscriminatory basis.

The agreement acknowledges only limited fair housing responsibility for GSA, confining that responsibility to housing opportunities for Federal employees. It thus permits GSA to select locations with "unfair housing" for minority non-Federal employees.[4]

Even within the HUD/GSA agreement, GSA has interpreted its responsibilities narrowly. For example, GSA officials maintain that they are not responsible, in selecting space, for ensuring that there is an adequate supply of low- and moderate-income housing on a nondiscriminatory basis, even for Federal employees. GSA reports that the extent of its duty is to "consider" the availability of such housing[5] a limitation which, because of the agreement's emphasis on affirmatively furthering the purpose of Title VIII and pursuing low- and moderate-income housing objectives, appears far narrower than the intent of the agreement.[6]

III. FAIR HOUSING ENFORCEMENT MECHANISMS

The fact that regulations for implementing the HUD-

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[1] Title VIII of the Civil Rights Act of 1968 requires Federal agencies to administer their programs and activities relating to housing and urban development in a manner affirmatively to further fair housing. GSA, which is responsible for securing and assigning space for most Federal agencies, is the agency with the greatest potential for promoting uniform policy to assure fair housing conditions in the vicinities of Federal installations. In 1969, GSA first officially recognized fair housing responsibilities, but took no systematic action to implement them. Executive Order 11512, issued in February 1970, directs that the availability of low- and moderate-income housing be considered in the Federal acquisition of space but does not require that housing be available on a nondiscriminatory basis. The Office of Management and Budget is currently drafting a revision of this Executive order to give GSA responsibility for considering fair housing conditions at all income levels.

[2] Three days after the President's housing message in June 1971, GSA and HUD signed a Memorandum of Understanding acknowledging their fair housing roles in the process of locating and relocating Federal agencies.

[3] A project development investigation is a general survey of a metropolitan area for the purpose of identifying specific space needs for Federal activities. A site investigation is a review of a particular site for which construction of a Federal facility is proposed. A lease action necessitates the review of a particular structure and surrounding locality to assess the feasibility of a Federal lease.

[4] Executive Order 11512 makes no distinction between housing for Federal employees and housing generally.

[5] GSA acknowledges only this obligation: In the event that HUD finds that the supply of low- and moderate-income housing is insufficient or fair housing conditions do not prevail, GSA, HUD, the involved agency, and the community must cooperate in developing an affirmative action plan to correct the deficiencies identified.

[6] This interpretation is also considerably narrower than GSA's 1969 policy which pledged to avoid areas known to lack adequate low- and moderate-income housing for Federal employees.

GSA agreement were not issued in final form until June 1972—one year after the agreement was signed—delayed uniformity in execution. To date, GSA has not taken the steps necessary for its systematic implementation.

A. Implementing Procedures

The principal policy innovation in the agreement was to provide responsibility for the availability of low- and moderate-income housing on a nondiscriminatory basis. The implementing procedures, however, place far greater emphasis on the supply of housing, transportation, and parking facilities for low- and moderate-income employees. The procedures provide almost no detail on how to measure the absence of equal housing opportunity.[7]

The procedures contain insufficient guidance for making effective use of HUD's reports on the availability of low- and moderate-income housing on a nondiscriminatory basis. GSA is obligated to consider a myriad of factors in securing space for Federal agencies.[8] The procedures do not specify, however, what weight is to be attached to each factor. The importance of the presence or absence of a nondiscriminatory housing market thus is left to personal discretion.

The procedures do not serve to encourage communities under consideration for Federal installations to improve housing opportunities.[9] Although the procedures provide that State and local officials be notified of pending investigations in connection with proposed construction for Federal facilities, this is the limit of the imposed obligation. There is no parallel requirement for informing these officials when a survey is being made to assess a community's general potential for accommodating a Federal activity, or when a review is being conducted in conjunction with leasing a specific facility. The procedures do not require that civil rights and fair housing groups be informed of proposed actions, or that there be any public disclosure of the review results. Thus, GSA actions to create public awareness of the Federal interest in equal housing opportunity are minimal.

The HUD-GSA agreement applies to all GSA lease and construction activity. The implementing procedures, however, were designed to greatly restrict the actions to which the agreement would apply.[10] This was done because of the large volume of GSA activity in securing space for Federal agencies. In the year before the issuance of these restrictions, GSA interpreted the agreement to apply to approximately 18 project development investigations, 20 site investigations, and 22 lease actions.[11] Since some of these site investigations and lease actions involved the relocation of fewer than 100 low- and moderate-income employees, under current regulations they would not be considered to fall under the jurisdiction of the agreement.

B. Coordination with HUD and Other Federal Agencies

Coordination and oversight of the agreement are severely lacking. Neither GSA nor HUD has been assigned, or has assumed, the task of devising an overall plan to ensure that the availability of low- and moderate-income housing on a nondiscriminatory basis will be given high priority by every Federal agency.

GSA has not taken responsibility for informing HUD when HUD's investigations provide insufficient information. For example, 2 months after the agreement was signed, GSA requested HUD to provide assistance in identifying and compiling information on the social and economic aspects of Las Cruces, N. Mex. At that time, GSA's regional office in Fort Worth, Tex., was apparently unaware of the agreement's requirements. The ensuing HUD report made no mention of the extent to which housing was available on a nondiscriminatory basis. GSA accepted the HUD report as fulfilling the requirements of the agreement. GSA took no action to obtain that information or to see that fair housing issues would be contained in future HUD reports.

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[7] The procedures do not provide a list of specific areas to be examined—for example: the existence of a comprehensive, enforceable fair housing law; the adoption of affirmative marketing policies by the local housing and home finance industry; or actions by local government officials and local civil rights groups to ensure that all facilities and services in the community are open to minority group families on an equitable and desegregated basis.

[8] Additional factors to be considered include: efficient performance; convenience of the public; safety of working conditions; use of existing Government-owned buildings; the need for development and redevelopment of areas; impact on the socio-economic conditions of the area; consolidation of agencies in common or adjacent space; consistency with State, regional, and local plans; adequacy of access from the urban center; and adequacy of parking.

[9] There is no procedure for automatically informing such communities that, for example, their zoning ordinances and building codes will be reviewed for the extent to which they are compatible with the growth of lower-income housing and that actions taken by the local government to permit the operation of Federal low-income housing programs will be examined.

[10] The procedures require that the agreement be invoked for all project development investigations; site selections for public buildings in which 100 or more low- or moderate-income employees are to be employed; and lease actions where 100 or more low- or moderate-income employees are expected to be employed in the space leased and which significantly increase travel time, travel costs, or parking costs. As a result, the agreement will not apply in a number of cases in which employees will retain their former housing. While seemingly practicable because this obviates a review of situations in which most Federal employees are not seeking housing, the outcome is to greatly limit the use of GSA's authority. It disregards the possibility that employees are currently forced to live in segregated housing or housing beyond their budget. The agreement could be used to require the development and execution of affirmative action plans to correct housing deficiencies in communities in which Federal facilities are currently located.

[11] Even at that time, GSA had imposed limits on enforcement of the agreement, as evidenced by the fact that the number of reviews contrasts sharply with the amount of GSA activity. GSA is responsible for approximately 1,500 leases a year, the majority of which are renewals. It participates in fewer than 50 site acquisitions a year and fewer than 25 project development investigations.

GSA has a limited view of its responsibilities for involving relocating agencies in guaranteeing that there is adequate and nondiscriminatory low- and moderate-income housing for their employees.[12] Whatever actions an agency chooses to take to further this objective are discretionary and *ad hoc*.

The agreement requires relocating Federal agencies to provide a counseling and referral service to assist employees in obtaining housing, and both GSA and HUD must cooperate in this effort. GSA takes no initiative, however, to ensure that such services are established, viewing that responsibility as resting with the Federal agency involved. This situation works to the detriment of employees when inadequate action is taken by their agency to provide housing guidance. GSA established an employee relocation task force on one occasion, but it acknowledges that it has participated in no other such effort.[13]

C. Complaints

GSA has no means of informing employees of relocating agencies of the protection provided by the HUD-GSA agreement. Relocating employees who find themselves faced with a discriminatory housing market, or with an inadequate supply of low- and moderate-income housing, may be unaware that HUD, GSA, and their own agency have a responsibility to prevent such an occurrence.

There is no GSA office with special responsibility for receiving or investigating complaints about an inadequate or unfair housing market or any other difficulty arising from insufficient enforcement of the HUD-GSA agreement. GSA officials report that such complaints would be referred back to the relocating agency. No other procedures for handling complaints exist or are planned.

D. Analysis of HUD Reports

The requirement to consider the available supply of low- and moderate-income housing on a nondiscriminatory basis has been—at least on occasion—assigned a low priority. For example, the HUD investigation in Las Cruces found that there was an inadequate supply of low- and moderate-income housing. However, GSA proceeded with construction plans, basing its action on its opinion that the project would have minimal impact upon the employees.[14]

E. Review of GSA Actions

GSA reports that all of its regional offices[15] are complying with the regulations implementing the HUD–GSA agreement. This assertion, however, is based upon the opinion of staff in the GSA central office and not upon systematic review of the regions. GSA does not, in fact, plan to conduct such reviews. Further, GSA does not presently intend to undertake reviews following agency relocation to evaluate the housing situation.[16] Thus, GSA will have no regular method of determining the results of its decisions and the sufficiency of HUD reports.[17]

F. Affirmative Action Plans

When GSA makes a location decision contrary to HUD's recommendation, GSA, HUD, the involved agency, and the community must develop a written affirmative action plan addressing itself to HUD's negative finding. Such affirmative action is not mandated, however, when inadequate low- and moderate-income housing or nondiscriminatory housing is found by reviews conducted in connection with project development investigations.[18] Thus, the results of such reviews will not be used to put communities on notice that no Federal facility will be located in that area until positive steps are taken to increase equal housing opportunity. Likewise, there is no provision that communities which are judged to have adequate fair housing opportunities will have priority in receiving Federal facilities.

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[12] GSA has no system for relating this concern to the agencies. The agencies are required to provide GSA with statistics on their low- and moderate-income employees. At the option of GSA, this may include such things as income, family size, and minority status. Agencies are not required, or even encouraged, to survey employees concerning housing needs; to consult employee groups when making relocation decisions; to place priority on employee needs for low- and moderate-income and nondiscriminatory housing when considering relocation; or to obtain and use information about possible areas for relocation with satisfactory records of fair low- and moderate-income housing. GSA should make the needs for such action known to all Federal agencies well in advance of any consideration of relocation.

[13] This task force was established for the relocation of the employees in the Washington, D.C. offices of the Department of the Navy which were relocated to suburban Virginia in 1969-70, well before the signing of the HUD-GSA agreement.

[14] In a Jan. 21, 1972, letter to HUD defending its decision, GSA emphasized the urgent need to proceed with the project. GSA stated that the agencies concerned were already located in the general urban renewal area in question and that placement of the Federal facility within that area would enhance the social and economic conditions of the community.

[15] Under the implementing regulations, responsibility for executing the HUD-GSA agreement rests essentially with the regional offices of the two agencies.

[16] Such a review might include a survey—by race, ethnic origin and grade level—of the percent of employees who did not relocate, a review of their reasons, and a survey of the relocated employees to determine the housing conditions they actually faced in the new location.

[17] In conjunction with HUD, GSA does plan to investigate, for the first time, the low- and moderate-income and fair housing situations for a group of Federal properties previously acquired but not yet occupied. These investigations, however, will be similar to others required by the HUD-GSA agreement. They will not serve as an evaluation of the adequacy of the reviews already conducted under the agreement.

[18] The results of such reviews will be available for later use when Federal development of the area actually begins. There is no rule or procedure which would require that information concerning low- and moderate-income and fair housing be made available to the community, to fair housing groups, or even to Federal agencies.

When an affirmative action plan is mandated, the plan must state that an adequate supply of low- and moderate-income housing will be available on a nondiscriminatory basis and that transportation to the Federal facility will be adequate. Under the regulations, these actions need not be completed, however, until six months after occupation of the building. This substantially weakens the effectiveness of the requirement.[19]

Despite the fact that affirmative action plans are required to remedy defects identified by HUD, specific procedures for developing such plans have not yet been set out by GSA. Thus, the responsibilities of HUD, GSA, the involved agency, and the community have not been clearly delineated and mechanisms for remedying inadequacies have not been outlined. GSA justified the absence of such guidelines by noting that in only one case has HUD issued a finding which demonstrated a need for an affirmative action plan.[20]

Further, there are no criteria for assessing any affirmative action plans which will be developed and no procedures for monitoring compliance with those plans.[21] The most serious shortcoming, however, is that GSA has not stated what actions it will take if an affirmative action plan is not developed, is insufficient, or is inadequately executed.[22]

The fact that GSA has determined so little need for affirmative action may well be because of its restricted view of the Executive order and the agreement. A Federal court decision involving the location of an Internal Revenue Service facility at Brookhaven, N.Y., noted that GSA's interpretation of its duties under the Executive order was too narrow and that GSA had failed to comply with that order.[23]

IV. ORGANIZATION AND STAFFING

The Executive Director of GSA's Public Building Service serves as overall director and coordinator of the agreement within GSA.[24] The procedures implementing the HUD–GSA agreement give the responsibilities for decisionmaking within GSA and coordination with HUD to the regional directors[25] of the Public Buildings Service (PBS). In practice, realty officers and program analysts have responsibility for routine execution of the agreement.[26] No civil rights staff is assigned responsibilities under the agreement. The Office of Civil Rights receives copies of all related correspondence, but is not involved in implementing the agreement.

GSA's fair housing effort suffers from lack of full-time staff to see that specific fair housing assignments of the Public Buildings Service under the HUD–GSA agreement are thoroughly implemented.[27] There is need for a full-time director who would be responsible for fair housing responsibilities throughout the agency and who would report directly to the Administrator.

GSA staff has been given only limited training for implementing the HUD–GSA agreement. The staff needs to be aware of the nuances of housing discrimination in order to review HUD reports adequately and to prepare for the development and monitoring of affirmative action plans. Training has been limited, however, to assisting in the technical execution of the agreement and to defining such terms as "parking," "transportation," and "low- and moderate-income." Training has not focused on the fair housing aspects of the agreement.

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[19] If a housing situation is not improved prior to the move into the building, employees affected by the unavailability of adequate housing and the lack of fair housing opportunity might be unable to relocate with their agencies, thus losing most benefits they might derive from the affirmative action plan.

[20] In Baltimore County, Md., HUD found an inadequate supply of low- and moderate-income housing. GSA concluded that the boundary of HUD's investigation, which did not include the city of Baltimore, was arbitrary. GSA contended that transportation from Baltimore to the proposed site was adequate. That site was selected and an affirmative action plan is being developed.

[21] The implementing regulations provide only that HUD shall monitor compliance, and in the event of noncompliance HUD and GSA "shall undertake appropriate action."

[22] GSA has not indicated, for example, whether it would curtail any further relocation in this area until adequate nondiscriminatory and/or low- and moderate-income housing were available. Possibilities for GSA action are limited, however, unless compliance with basic requirements is mandated prior to occupation of the building.

[23] On the basis of testimony concerning insufficient low- and moderate-income housing and patterns of racial discrimination, the court noted that the HUD-GSA agreement calls for affirmative action and ordered GSA to retain housing units located at Suffolk Air Force Base until the availability of housing for low-income and minority groups is assured.

[24] The Executive Director is stationed in the Central Office, PBS. He has a higher rank than the regional directors and reports directly to the Commissioner of the PBS. The Executive Director is in charge of policy development, planning, budgeting, financial management, program evaluation, management improvement, systems development, and administrative activities of PBS. He also functions as director of the region which includes Delaware, Maryland, Pennsylvania, Virginia, and Washington, D.C.

[25] Each PBS regional director is responsible for notifying the appropriate HUD regional administrator of plans to locate or relocate a Federal agency in that region. The director is responsible for reviewing the HUD evaluation of the area and for monitoring any affirmative action plans required.

[26] The primary function of all of these staff members is acquisition, leasing, and managing of Federal property.

[27] Such an assignment would not diminish the responsibilities of those officials with existing responsibilities under the agreement but would increase the quantity and quality of their activity by providing additional training, guidelines, and oversight.

VETERANS ADMINISTRATION (VA)

I. OVERVIEW

The Veterans Administration has not taken the action necessary to develop a viable and comprehensive equal opportunity program. Long-range goals for providing housing to minority veterans are needed. VA's fair housing effort lacks a full-time director and is severely understaffed. This situation will be aggravated with the addition of affirmative marketing regulations, which will require additional staff for effective implementation.

Many of the innovations in the VA's equal opportunity program since this Commission's report in November 1971 are still in the planning stage and may take months to effectuate. VA has done little to institutionalize its equal opportunity program and develop a system of staff accountability for implementing its policies. Many key staff activities, such as program evaluation, are *ad hoc* and dependent upon the personal interests of the staff involved. Outside the equal opportunity staff, there are few official assignments for executing fair housing programs and few guidelines for implementing VA responsibility.

II. PROGRAM AND CIVIL RIGHTS RESPONSIBILITIES

Enforcement of equal opportunity in VA housing programs is the responsibility of the Loan Guaranty Service within the Department of Veterans Benefits. This Service administers the Guaranteed Loan Program (GI Loans) and the Direct Loan Program. It also engages in the sale of property acquired through mortgage foreclosures.

The Service is responsible for seeing that there is no discrimination in its programs. It also has the duty of seeing that lenders, builders, developers, and brokers use their roles in the VA housing process to expand equal housing opportunities.[1]

Nonetheless, VA has never outlined the steps necessary for a comprehensive civil rights program. It has not systematically determined its own responsibilities for enforcing the fair housing law, or for requiring participants in VA programs to take affirmative action for providing housing on a nondiscriminatory basis. VA has not set goals for increasing minority participation in its programs or for increasing its own role in providing equal housing opportunity.

III. FAIR HOUSING ENFORCEMENT MECHANISMS

A. Certification

The most widely used tool in the effort to bring about equal housing opportunity in VA housing programs is the certification of nondiscrimination. When builders and developers request VA approval for subdivision construction[2] or appraisals of new houses, they must certify that there will be no discrimination in the sale of the dwellings. For several years, VA equal opportunity staff has urged that certification be required for appraisals of existing houses, thus extending the nondiscrimination requirement to all real estate brokers selling property appraised by VA. Instead of taking this forward step, VA is taking a step backwards. VA plans to eliminate requirements for certification of nondiscrimination in the sale of all VA-appraised property. A weaker measure will be substituted, requiring that a notice of the nondiscrimination obligation merely be printed on the appraisal form.

Certification of nondiscrimination is also required of veterans obtaining VA housing loans; purchasers of VA-acquired properties; property management brokers who are paid a fee for contracting improvements on VA-owned properties about to be placed on the market; and sales brokers who receive a commission for selling VA properties.

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[1] Title VIII of the Civil Rights Act of 1968 requires all executive departments and agencies to administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purpose of that title. It expressly prohibits discrimination in the financing of housing, in the advertising of housing for sale or rent, and in the provision of brokerage services.

[2] Approval of construction means VA has determined that there is a need for such housing and that the construction plans are feasible. In its review, VA examines such things as the existence of water and sewage facilities. It does not, as of yet, review the builder's plan for ensuring that minorities will have an opportunity to purchase dwellings in the proposed subdivision. Many banks require VA or HUD approval before financing builders and developers.

VA plans to extend certification to require brokers who manage and sell VA-owned properties to market *all* their properties in a nondiscriminatory manner that will attract all racial and ethnic groups.[3] VA also plans to require that fee appraisers certify that race has not been taken into account in their appraisals.

The one major area of the real estate business which benefits from VA housing programs without certifying nondiscrimination is mortgage lending.[4] Although VA may deny a loan because it disapproves of the practices of the bank involved, it has not used this power to require nondiscrimination by lending institutions.

Despite the psychological impact upon the signers of the certification procedures, VA's current use of certification as a tool for publicizing and reinforcing nondiscrimination requirements is, at best, minimally effective. VA provides signers with inadequate information on discriminatory practices, thus failing to correct the impression that only intentional and personal discrimination is prohibited.[5]

Equal opportunity considerations are not routinely incorporated in VA reviews, such as those for subdivision approval. There is no monitoring of the housing practices of those who sign certificates of nondiscrimination. In short, VA has taken no steps to ensure that those who sign nondiscrimination certifications are in fact complying.

B. Advertising

VA has for several years required field stations to advertise VA-owned properties in the minority press. Equal opportunity staff, when reviewing the implementation of this requirement, has found that its execution has been inadequate.[6] VA recently issued a revised circular to field stations, reiterating the responsibility to advertise a sampling of properties of every price range and every type of neighborhood. The circular gave specific instructions for doing this.

C. Affirmative Marketing Regulations

VA has published for comment proposed affirmative marketing regulations covering builders and developers who request subdivision approval or certificates of reasonable value. The regulations will be similar to those adopted by the Department of Housing and Urban Development in February of 1972. They have been closely coordinated with HUD's to ensure reciprocity of sanctions between the two agencies VA has not yet hired, however, any staff to implement and enforce the regulations.

D. Coordination with HUD

Before HUD issued its affirmative marketing requirements, VA and HUD subdivision approval was generally concurrent. For example, if HUD analysis of proposed construction showed that no additional housing was necessary, VA would not approve the subdivision. Now, however, when HUD disapproves subdivisions because of inadequacies in the developer's affirmative marketing plans, VA will not hold up approval of the subdivision—despite the fact that both agencies are bound by the same fair housing law and Executive order.

E. Complaint Investigations

There is no widespread circulation of information to veterans and others affected by VA programs of their right to complain of discriminatory treatment by such persons as brokers, fee appraisers, and builders under VA housing programs. In nine field stations, counseling of minority veterans is supposed to provide information about fair housing. This is, however, a pilot project. Although it would seem worthwhile to do so, there are no definite plans to expand the project to the other 48 field stations. At this time, the only nationwide effort in this direction continues to be pamphlets, available at VA field stations, on the VA guaranteed loan program. The pamphlets contain a brief section on fair housing legislation.

There is presently no requirement that brokers, builders, sellers, lenders, and others post information on the right to nondiscriminatory treatment or on the buyer's remedy when that right has been violated. In short, little publicity is given to what constitutes a legitimate complaint and with whom complaints should be filed. The full extent of VA's requirement is that fair housing posters be displayed by builders with subdivision approval and brokers managing and selling VA-owned properties.

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[3] This certification will be required by each management and sales broker as a condition of doing business with the VA and will be similar to a proposed HUD requirement.

[4] In addition to the fact that VA guarantees housing loans made to veterans, greatly limiting the risk taken by the bank, lending institutions may apply for an automatic approval status, which entitles them to approve loans to eligible veterans without prior approval of the applicant by the VA. About 12 or 13 percent of all guaranteed loans are made with automatic approval.

[5] Restrictive zoning and inaccessible real estate offices, plus such practices as failure to advertise housing in the minority press and refusal to make loans in certain geographic areas, may not be directed at excluding minorities. They may have, nevertheless, the effect of perpetuating or even exacerbating existing patterns of discrimination.

[6] In some instances, advertisements contained no address. In other cases, the same advertisement was run several months. Some field stations had interpreted the requirement as an economic step to facilitate the sale of properties which proved difficult to sell by other means.

VA's complaint process is haphazard. It has no procedures for its equal opportunity staff to follow in processing housing complaints. Since 1968, the basic complaint responsibility has rested with the Loan Processing Section, which handles all housing complaints relative to loan credit policies.[7] The Loan Processing Section has issued no guidelines for expediting investigation of fair housing complaints, and staff members receive no special training in the processing and investigation of these complaints.

Until recently, equal opportunity staff did not even know fair housing complaints were supposed to be handled by the Loan Processing Section. They had, in fact, received and processed some complaints themselves. There is no established procedure for informing the equal opportunity staff of the receipt of fair housing complaints elsewhere within the VA. In fact, there is no system which would yield an accurate tally of the number of complaints received.

HUD refers any complaints against participants in VA housing programs to VA. There is, however, no system for determining concurrent VA jurisdiction in complaints against HUD programs. Thus, VA may remain unaware of a complaint against a builder or developer who enjoys VA approval, or against brokers who have certified to VA that they will not discriminate

F. Racial and Ethnic Data Collection

VA presently collects data on the race and ethnic origin of almost all applicants for guaranteed and direct loans, and of most persons receiving loans. VA intends to, but does not now, collect data on the property locations of guaranteed loans. Data are also collected on those who purchase, and those who offer to purchase, VA-acquired property. When VA acquires property, data are collected on the racial and ethnic composition of the neighborhood.[8]

VA collects data on the type of lender and the type of housing, new or existing, and these data can be correlated with racial and ethnic data. In most cases, data are available for each field station, which generally corresponds to a State. In some cases, county data are also retrievable. A major shortcoming of VA's data system, however, is that data on particular subdivisions are unavailable. VA's proposed affirmative marketing regulations will require builders to market all houses within an approved subdivision affirmatively and provide VA with racial and ethnic data on the sale of those houses.

Field stations make no use of the data collected. Further, although equal opportunity staff allocates time for data review, the only action taken as a result of that review is to look further into the activities of the field stations. Even this occurs only when a review of a particular field station is already scheduled by the evaluation staff. VA does not attempt to survey veterans to determine the relative rates of participation in VA housing programs by various racial and ethnic groups.[9]

G. Civil Rights Evaluation

The equal opportunity staff does not conduct civil rights reviews of field stations. The only reviews of field stations are conducted by the evaluation staff of the Loan Guaranty Service, which has a staff of twelve people.[10]

Until a year ago, these reviews were limited to evaluating the field staff's execution of VA regulations.[11] Little, if any, attention was paid to compliance with equal opportunity requirements. During the past year, reviews of fair housing efforts have been incorporated into a number of the evaluation staff's routinely scheduled reviews. The staff has not, however, conducted reviews devoted exclusively to civil rights operations. Moreover, except for the recent requirement that this staff monitor the advertising procedures of the field stations, investigations of civil rights issues are *ad hoc* and are conducted only when instigated by the equal opportunity staff.

There are no evaluation guidelines specifying that all field station reviews include an examination of the extent to which the stations are providing services to minority veterans or the extent to which the stations are monitoring the equal opportunity activities of builders, developers, lenders, fee appraisers, and brokers.

VA has no procedure or staff for conducting compliance reviews. Thus, VA does not review the activities of builders, developers, fee appraisers, and brokers to see that they are complying with certificates of nondiscrimination and are taking affirmative steps to improve equal housing opportunities.

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[7] Complaints received by this Section include such matters as disagreements over utility charges or credit procedures. Actual complaint investigation is conducted by field offices.

[8] Data are tabulated separately for all-white, all-minority, and integrated neighborhoods. An integrated neighborhood is defined by VA as "a street between intersections where the occupants on both sides of the street include whites and one or more minority families." In rural areas "neighborhood" is defined as "commonly understood in the community." At present, racial and ethnic stability of the neighborhood is not taken into account although VA reports it is considering the inclusion of such information in future property location data.

[9] VA plans to measure minority participation rates, however, when baseline data become available from the 1970 census.

[10] Not one of these is a minority group member.

[11] Field station reviews frequently include an investigation of loan processing procedures.

IV. ORGANIZATION AND STAFFING

The director of the Loan Guaranty Service is charged with seeing that VA housing programs comply with Title VIII of the Civil Rights Act of 1968 and with Executive Order 11063. The Director's principal function, however, is overall administration of VA housing programs, and he is thus unable to devote more than about 10 percent of his time to equal opportunity. As a result, the equal opportunity staff suffers from lack of a full-time director with sufficient authority to execute VA's fair housing responsibilities.[12]

Although the Loan Guaranty Service has a staff of 2,375—93 in Washington and 2,282 in the 57 field stations—only two professional staff members are assigned full-time to equal opportunity in VA housing. One of these staff members oversees programs to invite minority purchasers and enterprises to participate in VA housing activities[13] and has little direct involvement with fair housing requirements. Thus, there is only one position devoted to civil rights implementation and enforcement.[14]

The current responsibilities of the equal opportunity staff are too extensive to be accomplished effectively by only two persons. Because of lack of staff, VA is unable to undertake many activities essential to adequate civil rights enforcement, such as training and compliance reviews.

VA has indicated that it plans to adopt new policies requiring the marketing of properties with maximum outreach to minority communities. It beleives, nevertheless, that no additional equal opportunity staff is necessary at this time and has no plans for providing additional full-time staff for equal housing opportunity.

In defense of its allocation of manpower, the VA has often answered that many of the staff members throughout the Loan Guaranty Service have equal housing responsibilities. Nonetheless, no additional headquarters or field staff personnel have been assigned specific fair housing enforcement responsibilities, even on a part-time basis. Although the two equal opportunity staff members receive assistance from the evaluation staff of the Loan Guaranty Service and from field station personnel, this assistance is generally informal and *ad hoc*. VA has yet to outline the specific fair housing functions of the various housing divisions, and it has not given authority to the equal opportunity staff sufficient for monitoring these functions.

Only in the counseling of minority veterans is training provided to Loan Guaranty Service staff.[15] Apart from this, VA provides no civil rights training to the various staff members whose responsibilities, such as complaint processing and program evaluation, relate to equal opportunity in VA housing programs. Despite the proposed issuance of affirmative marketing regulations, VA has not planned any training program to prepare staff for these new responsibilities.

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[12] In order to heighten the execution of civil rights responsibilities in all the VA loan and direct assistance programs, VA should consider establishing an adequately staffed equal opportunity office. It would be essential that the director of this office be directly responsible to the Administrator.

[13] This staff member's efforts are generally limited to oversight of the VA program to provide guidance and counseling to minority veterans regarding the availability and use of VA housing loans and oversight of VA efforts to increase employment of minority builders, developers, real estate and property management brokers, and fee appraisers.

[14] Among responsibilities of this position are drafting guidelines and regulations to improve equal housing opportunities and identifying potential weaknesses in enforcement through review of racial and ethnic data.

[15] The counseling program is designed to assist minority veterans in becoming homeowners. The program is conducted by field staff on a part-time basis. These staffs are provided a limited amount of training in counseling by one of the equal opportunity staff members.

FEDERAL FINANCIAL REGULATORY AGENCIES

The Comptroller of the Currency (COC)
The Federal Deposit Insurance Corporation (FDIC)
The Federal Home Loan Bank Board (FHLBB)
The Federal Reserve Board (FRB)

I. OVERVIEW

None of the four financial regulatory agencies is meeting its fair housing responsibilities. The enforcement mechanism of each agency needs serious improvement.

The complaint investigation process should be recognized as an ineffective enforcement tool. Significantly increased efforts should be made by each agency to improve the use of its regular examination process to detect discriminatory lending practices. Examiner training programs need to be strengthened to prepare examiners to monitor adequately the more subtle forms of discrimination, such as "redlining" and unfair application of credit standards.

Although all four agencies should require their regulatees to collect racial and ethnic data on all loan applications, only two—the Federal Home Loan Bank Board and the Federal Deposit Insurance Corporation—are even considering doing so. Adequate assessment of each lender's compliance with Title VIII depends on the availability of such data. Without this data, an examiner's efforts can be little more than educated guesswork.

Further, none of these agencies has directed its member institutions to impose nondiscrimination requirements on builders and developers whom they finance.

Finally, in only one agency, the Federal Deposit Insurance Corporation, is there a clear assignment of responsibility for all civil rights matters, particularly Title VIII. Even in that instance, the person designated has a wide variety of other duties. Civil rights enforcement requires and deserves the attention of a senior level, full-time official, responsible to the chief executive officer of the agency.

That alone, however, is not enough. The agency office primarily concerned with the examination and analysis of regulatee performance must assign primary equal opportunity duties to designated individuals so as to provide a continuous line of accountability from the operations level to the chief executive of the agency.

II. CIVIL RIGHTS RESPONSIBILITIES

A. General Responsibilities

The four Federal financial regulatory agencies—the Federal Home Loan Bank Board (FHLBB), the Board of Governors of the Federal Reserve System hereinafter referred to as the Federal Reserve Board (FRB), the Comptroller of the Currency (COC), and the Federal Deposit Insurance Corporation (FDIC) [1]—together regulate the operations of nearly all the Nation's banks and savings and loan institutions. These regulatees are forbidden by Title VIII of the 1968 Civil Rights Act from discriminatory practices in connection with their mortgage and housing-related lending. In turn, the four regulatory agencies are charged by the same law with an affirmative duty to administer their activities in such a way as to further the equal housing objectives of the act.

Each of the agencies has taken some form of action indicating at least a tacit recognition of its fair housing responsibilities.[2] In addition, each of the agencies plays a supporting role in ensuring equal employment opportunities within the lending institutions they regulate.

B. Requiring Lenders To Impose Nondiscrimination Requirements

Despite their legal authority to do so, none of the Federal financial regulatory agencies has required that the lenders they supervise impose nondiscrimination requirements on builders and developers with whom they deal. The Federal Reserve Board has prepared a legal memorandum outlining its opinion that there is some question that legal authority to impose such requirements exists. The other three agencies have taken the position that the imposition of nondiscrimination requirements for builders would be generally inappropriate. The FHLBB, for example, points out that since builders and developers are already subject to the requirements of Title VIII and the jurisdiction of the Department of Housing and Urban Development (HUD), the suggested requirements would serve only to remind them of their obligations.

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[1] Three of the four agencies are independent. The Comptroller of the Currency is a part of the Department of the Treasury.

[2] Less than a year ago, one of the regulatory agencies continued to challenge the Commission's position that Title VIII imposed a clear duty on each agency to enforce the equal lending provision of the act. The challenge centered around the issue of whether the activities of the regulatory agencies constituted "programs and activities relating to housing and urban development . . ." within the meaning of Section 808(d) of the act.

While there would seem to be little harm in such reminders, that is not the issue. Title VIII mandates a concerted, cooperative enforcement effort by all Federal agencies. As such, it recognizes that HUD alone cannot monitor the civil rights performance of each and every homebuilder. The financial regulatory agencies are in a unique position to bring an additional and needed enforcement lever to bear upon the homebuilding industry. Their continuing failure to do so severely limits the effectiveness of Title VIII.

The extent to which each of the four agencies is, or is not, meeting its other civil rights responsibilities is discussed in the sections which follow.

III. FEDERAL HOME LOAN BANK BOARD

A. Civil Rights Enforcement Mechanisms

At present, the FHLBB's enforcement program utilizes the twofold approach of complaint investigations and periodic examinations of each of its supervised institutions.

1. Complaint Investigations

The FHLBB has received four complaints since October 1971.[3] Three of these were, in fact, requests for assistance from the Department of Justice in which only one instance of discrimination was alleged.[4] The fourth was a complaint against three savings and loan associations by a civic group, alleging violation of the FHLBB's advertising regulation. The Board found no violation by two associations and reported that the third is now in compliance. No complaints were filed by private individuals.[5]

The Board's current policy regarding most Title VIII complaints is to forward them to HUD. Such policy not only reflects an apparent lack of Board interest in the level of Title VIII compliance by its regulatees, but represents as well a conscious consignment of Board complaints to HUD's much publicized complaint backlog. Only those complaints relating to the Board's own Nondiscrimination Requirements, discussed *infra*, are investigated by the Board.

2. The Examination Process

The Federal Home Loan Bank Board's civil rights examination process can best be described as a monitoring procedure, of uncertain potential, which has been added to the FHLBB's regular examination schedule. The Board has instituted a civil rights training program for examiners and has developed a questionnaire to be filled out at each field visit by the examiner-in-charge. The Board believes such a program is the best means of checking on lender compliance with Title VIII and the Board's regulation.[6]

The training program for examiners consists of instruction on statutes, regulations, and investigatory techniques. The training is conducted by representatives of the Departments of the Treasury, Justice, and Housing and Urban Development, and the Board's own staff.[7]

This program can be commended for attempting to sensitize examiners to some of the subtle patterns and implications of financial discrimination.[8] Its principal investigatory focus, however, has been on lender compliance with the affirmative action aspects of the Board's own regulations [9] and not on the identification of discriminatory lending policies or criteria.[10] Thus the Board's training program cannot be considered adequate.[11]

The FHLBB's recent adoption of a Civil Rights Questionnaire for use by its examiners deserves praise.

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[3] Additionally, the Board reported continuing cooperation with the National Committee Against Discrimination in Housing in the latter's investigation of alleged discrimination by three California institutions.

[4] In the other two instances, the Justice Department merely requested that the Board ask its regulatees to cooperate with the Department's investigations. The Board has requested Justice to provide more narrowly drawn complaints than were contained in the initial request.

[5] This fact lends additional support to our belief that no agency should rely upon the passive enforcement mechanism of the complaint process. In the field of mortgage lending, the complaint process is particularly ineffective. A large majority of all mortgage loans are arranged by the homebuyer's broker. Thus the homebuyer himself may never know whether a particular lender denied him a loan. The broker has far less incentive than the homebuyer to report instances of discriminatory treatment. Moreover, such complaints as do arise are now less likely than before to be received by the agencies. This is so because, contrary to the recommendations of this Commission, none of the agencies included itself as an addressee for complaints in the equal lending posters which supervised lenders are required to display.

[6] In the Board's opinion, the examination process will be enhanced "when" racial and ethnic record-keeping requirements are adopted by the Board and the other three agencies. Whether they will be adopted remains an open and serious question, which is discussed under affirmative action programs, *infra*.

[7] An attorney from the Board's Office of the General Counsel assisted the Office of Examination and Supervision in providing instruction to 400—approximately two-thirds—of the Board's examiners. Training will continue for the remaining third of the examiner force.

[8] For example, the relationship between financial and employment discrimination was one feature of a training film provided by HUD. In addition, Board instructors prepared examiners for discovering the possible use of complex racial "codes" on lending forms.

[9] For example, does the association have the required equal lending poster on display? Does its advertising carry an equal housing logo and message and avoid discriminatory words, phrases, or pictures?

[10] For example, differing interest rates on minority and nonminority loans; higher down payment or service charge for minority borrowers; and discouragement of minority borrowers at the oral inquiry stage of loan application.

[11] As noted, the Board anticipates the adoption of a racial and ethnic data requirement in the near future. At that point, follow-up training will be instituted.

The questionnaire inquires as to the level of awareness among institution personnel of Title VIII requirements and whether the savings and loan association has a written policy of nondiscrimination. In addition, it requires the association's managing officer to estimate the size of the minority population served and the number and percentage of minority loans being written. Finally, the form contains questions concerning the association's lending restrictions relative to minority applicants and minority neighborhoods.

While the use of the examination process to ascertain lender compliance with the Fair Housing Law is worthwhile, there is reason to believe that certain aspects of the procedures established by the Board may militate against that objective. Those procedures instruct the examiner-in-charge to complete the nondiscrimination questionnaire "exclusively" by means of an interview with the association's managing officer. If the officer's answers conflict with the examiner's "observations," he is instructed to file a memorandum directed to the chief examiner.

The examiner, through observation, may be able to detect conflicts with respect to such questionnaire items as the posting of discrimination notices in the association's lobby and the number of minority employees. It is difficult, however, to see how such a method could ensure adequate assessment of the lender's compliance with other significant aspects of civil rights laws and the Board's regulations. This is so because the procedures specifically prohibit the examiner—in the absence of specific instructions from the chief examiner—from performing any specialized examination of the association's records to uncover or substantiate possible discriminatory practices.

Most examiners, therefore, would not likely detect conflicts between fact and statement on such questionnaire issues as the absence or near-absence of lending in minority areas, or racial or ethnic bias in loan terms. The inability of the examiner-in-charge to conduct specific analyses of an association's records to verify management's statements regarding fair housing will mean that the effectiveness of the anticipated collection of racial and ethnic data will be severely restricted.

B. Affirmative Action—Nondiscrimination Requirements

On April 27, 1972, the FHLBB issued a regulation which placed new requirements on its regulatees. The regulation includes a statement prohibiting discrimination in all aspects of housing-related lending. It requires member institutions both to avoid discriminatory advertising and to post equal lending posters prominently in their lobbies. In addition, regulatees are prohibited from applying discriminatory employment policies.[12]

The Board's new regulation is identical to those issued by the other financial regulatory agencies, with one exception. The Board's regulation specifically recognizes the damage done by racially based "redlining." [13] The FHLBB regulation prohibits lending policies which discriminate against a loan applicant because of the race or ethnicity of residents in the vicinity of the home the applicant seeks.

Yet, in one sense, the Board's regulation was a grave disappointment. As issued in proposed form earlier in the year, the regulation contained a section which would have required the keeping of racial and ethnic data on each loan application, approved or disapproved. Such a requirement, together with a modification recommended by this Commission,[14] would have added significantly to the effectiveness of the Board's examination and enforcement program. The section was omitted, however, and its absence is a severe hindrance to an examiner attempting to ascertain a lender's civil rights compliance.

It should be noted that the Board, as well as the FDIC, fully expects the adoption of a racial and ethnic recordkeeping requirement in the near future. The principal reason given by the Board for its deferral was to avoid placing a data collection burden on one set of lenders which was not required of others. Yet, if no agency is to adopt the requirement unless all do, it may never be adopted. The Federal Reserve Board remains strongly opposed to such a requirement.[15]

C. Civil Rights Staff and Duties

The Board's civil rights efforts are carried out by personnel from three Board offices. The Acting Director of the Office of Housing and Urban Affairs [16] and an attorney from the Office of the General Counsel jointly perform civil rights planning and program functions related to both the fair housing law and equal employment. They in turn work with the Office of Examination and Supervision to coordinate examination aspects of the Board's enforcement efforts.

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[12] It should be noted that of the four financial regulatories, only the FHLBB has adopted an affirmative program to assist lenders in meeting their equal employment objectives. Last September the Board initiated its Vanguard Program, designed to help lenders locate qualified minority job applicants.

[13] "Redlining" is generally defined as a lending policy which excludes certain areas or neighborhoods from consideration in the making of mortgage or home improvement loans.

[14] The Commission recommended adding a simple code on each application indicating the character and location of the property. This would enable the examiner to determine whether minority borrowers were being restricted to certain neighborhoods.

[15] The Federal Reserve Board has not ruled out all possibility of adopting a data-keeping requirement in the future. Moreover, neither the FHLBB nor the FDIC has eliminated the possibility of unilateral action.

[16] This Office is presently composed of the Acting Director and his clerical staff. A Director has been hired and is due to assume his duties in September. While the Director reports personally to the Board, the principal activities of this Office since June 1972 have been related to the aforementioned Vanguard Program and the Board's encouragement of minority-owned savings and loan associations, rather than to compliance with fair housing laws.

While the Office of Examination and Supervision is responsible for monitoring civil rights compliance, its myriad other supervisory functions cannot but help dilute the attention given to fair housing and equal employment. If a vigorous equal opportunity program is to be maintained, it is essential that the Board establish an office with the primary duty of developing and implementing an effective monitoring and enforcement system. The office should have a full-time director accountable for the system's success or failure. At present, only the two staff members mentioned above have such a responsibility in an agency which supervises nearly five thousand lending institutions, and only the attorney in the Office of the General Counsel devotes any significant attention to the Board's obligations under Title VIII.[17]

A complaint recently received by the Commission indicates the strong possibility that—because of the size of the Board's civil rights staff or the agency's failure to integrate equal opportunity considerations with general program planning—one or more Board offices may perform in a manner which itself is discriminatory. One of the Federal Home Loan Banks, implementing a Board program designed to identify lenders who were vulnerable to adverse economic forces, requested selected institutions to list mortgages on properties in areas of economic decline. The areas were designated by postal zip codes. As a result of this action, the complaint alleged, lenders were "redlining" areas in which they previously had been making loans. The Board says the program was not intended to indicate to lenders that they should not make loans in certain areas,[18] but that is not the point. Rather, the issue is whether a careful advance look at the reporting procedure, in terms of its impact on minority-area lending patterns, could have prevented the alleged reaction.

IV. COMPTROLLER OF THE CURRENCY

A. Civil Rights Enforcement Mechanisms

The Comptroller's Office, like the FHLBB, relies upon complaint investigations and the examination process for enforcing the civil rights obligations of its regulatees.

1. Complaint Investigations

Since October of last year, the Comptroller has not received a single complaint. The Comptroller has not developed procedures for investigating civil rights complaints.

2. The Examination Process

The Comptroller's Office has yet to adopt a specialized form or questionnaire similar to those of the FHLBB and Federal Reserve Board. COC is "reconsidering" its position and has stated an intent to "follow closely" the Federal Reserve Board's experience. If that experience is favorable, COC will give "serious consideration" to adopting a similar form.

COC reports that its 1,500 examiners have been instructed to look for evidence of discrimination in mortgage lending as a part of every regular bank examination. There is, however, no clearly established procedure for either identifying or reporting a violation of the fair housing law.[19] The Comptroller indicates that discovery of a discriminatory practice would be followed by "appropriate supervisory action" as in the case of any other statute.

COC's position is that violations of Title VIII should receive the same attention accorded a violation of any other relevant statute. Yet the actions of the Comptroller's office are inconsistent with that statement. If serious allegations were raised about a nationwide pattern of well-concealed embezzlement, it clearly would be the occasion for an investigation far more vigorous than the regular examination process. Year after year, however, evidence continues to point to a pervasive pattern of discriminatory lending practices. These practices severely restrict the homeownership opportunities and housing choices of a significant segment of our population. This widespread denial of equal opportunity demands that COC devote every effort to thoroughly preparing its examiners to identify and report—in a regular, established manner—every violation of the fair housing law, followed by prompt and effective action against violators. Nevertheless, COC has not done so. Rather it treats civil rights violations as rare and inconsequential.

B. Affirmative Action—Nondiscrimination Requirements

The publishing of nondiscrimination requirements for all supervised lenders is COC's principal equal lending accomplishment in the last seven months. The requirements are similar to those of the FHLBB. They forbid certain discriminatory advertising practices and require both an equal lending notice in all mortgage advertising and a display of equal lending posters in each lender's lobby.

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[17] The attorney reported that approximately one-third of his time is spent on civil rights matters.

[18] The Board's explanation is that "distorted newspaper stories" stated that the zip code designation was intended to indicate "areas of concern" which lenders should avoid.

[19] It is apparent that the training received by the examiners covers only those fair housing requirements, such as equal lending posters and advertising, which are contained in the COC's own regulation. Thus, the important Title VIII obligations, discussed in Section II, *supra*, are largely ignored, rendering the agency's training program and examination process inadequate.

COC does not require collection of racial and ethnic data in connection with loan applications and has yet to take a position on the desirability of doing so. The Comptroller has committed the agency to joint action with the FRB and FDIC, indicating that no such requirement will be forthcoming unless all agree.

C. Civil Rights Staffing and Duties

There are no specific civil rights assignments at COC. The Comptroller's office indicated that complaints regarding violations of Title VIII would be handled by the Office of Chief Counsel just as any other complaint. COC stated that the Office of Chief Counsel does not have separate departments assigned to enforce specific statutes.

COC and other agencies have raised this "straw man" issue before. It has never been contended that only the creation of a separate department, charged solely with civil rights responsibilities, will satisfy an agency's Title VIII obligations. What is necessary, however, is the institutionalization of civil rights monitoring and review. In the financial regulatories, this would mean that examiners would be as well versed in the intricacies of discriminatory lending practices, and the means for their detection, as they are regarding other illegal practices. It would mean that both agency and lender personnel would be encouraged to regard fair lending as being as important an obligation as sound fiscal management. The response of the Comptroller—indeed, a simple comparison of the agency's procedures and those of the FHLBB—indicate that this is not now the case.[20]

With respect to the examination process, the Comptroller's position is that "over 1,500 examiners . . . conduct on-the-spot examinations," including checks for evidence of discrimination. In the absence of a more thorough training and detection program than COC has devised, its examiners cannot be regarded as fulfilling a significant role in support of equal opportunity.

V. FEDERAL RESERVE BOARD

A. Civil Rights Enforcement Mechanisms

1. Complaint Investigations

During the period since October 1971, the Federal Reserve Board and Banks have received no complaints of lending discrimination. The Board, alone among the four regulatory agencies, has requested HUD to forward copies of any complaints it receives concerning FRB regulatees to the Board's staff. The Board's staff possesses a relatively realistic attitude about the lack of effectiveness of the complaint process and places greater reliance on the examination process as a means of detecting noncompliance.

2. The Examination Process

Last year the Board's Division of Supervision and Regulation, with the cooperation of its Office of General Counsel, developed a special examiner training program and a Civil Rights Questionnaire for the examiners' use.[21] Civil rights enforcement has been made a regular part of the examiner training. Included are discussions of fair lending awareness, led by a member of the Office of General Counsel,[22] and techniques for detecting noncompliance.[23] One apparent drawback to the training program is that no written material on civil rights examination has been prepared and placed in the examiner's manual.

The Board's questionnaire suffers from the same lack of input of racial and ethnic data as does the FHLBB's. FRB, however, has made an effort to analyze the data obtained and to measure the questionnaire's effectiveness. The Division of Supervision and Regulation examined questionnaires on banks whose service area population was 5 percent or more minority. That examination produced at lease two findings which require intensive further study. First, the rate of loans to minorities, compared with their percentage of the general population in the area, was measurably lower than the rate for nonminorities. Second, loan application refusals were significantly higher for minorities. The Board plans to conduct studies to determine the causes of these disparities,[24] but has not yet done so.

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[20] For example, COC has evinced no serious assessment of its fair lending responsibilities and has not formalized training of its examiners. It has not adopted the type of questionnaire or reporting form now in use by the FHLBB, which is a necessary tool for examiners who are far less familiar with civil rights issues than with "traditional" banking matters.

[21] Similar in content to the form used by the FHLBB, the FRB questionnaire is completed by the examiner, both from his personal observations of the bank and its records and from information supplied by bank personnel. Questions cover the level of minority lending, "redlining," bias in loan terms, and compliance with the Board's nondiscrimination requirements.

[22] In addition to a review of the basic provisions of the Fair Housing Law and the Board's regulation, the staff attorney presents views of several civil rights groups as to what constitutes a violation of Title VIII and discusses the goals of that law.

[23] Examiners are instructed to become familiar with the service area of the bank being examined. They also are instructed to study the bank's loan portfolio for areas where loans are not being made and for variations from the ongoing rate of interest.

[24] A further study was made using examiners' reports of interest rates. The Board concluded that the almost total absence of interest fluctuations was an indication that where loans were being made to minorities the terms were equal.

The Board's use of its Civil Rights Questionnaire, begun in October 1971, is still considered experimental. FRB staff indicates that an indepth analysis of the questionnaire's effectiveness will be made this fall.

Despite the training on techniques for analyzing bank loan records for unequal lending behavior, Board staff indicates that principal reliance is placed on the statements of bank managers. Although Board examiners, unlike FHLBB examiners, are authorized to verify the information, there is little indication that this is done on a regular basis.

B. Affirmative Action—Nondiscrimination Requirements

The Board's recently published nondiscrimination requirements are essentially the same as those of the other three banking agencies. They prohibit discriminatory lending and command equal lending advertising and posters, but do not require the maintenance of racial and ethnic data regarding loan applications. Of the four agencies, the FRB has taken the strongest position against such data collection.[25] It has not participated in any joint efforts with the other three agencies on this subject. FRB states only that a joint effort "may be appropriate in the future" after the Board's staff has assessed the results of its current examiner-questionnaire experiment.

The Board's opposition is threefold: (1) Board staff members were uncertain of FRB's legal authority to require such data collection; (2) they are convinced that such a requirement would constitute a serious burden on lenders, while producing no commensurate benefits in detecting or deterring discriminatory practices; and (3) they feel that the process by which racial and ethnic data are obtained would offend many minority applicants.

As for an agency's legal authority to impose recordkeeping requirements on lenders, it can be answered that such policies do not offend Federal law or the Constitution. More important, however, is the fact that where racial data collection is necessary to ensure equal enjoyment of federally guaranteed rights, such data collection may be mandated.[26]

Second, since collection of such data is essential to effective enforcement, some administrative burden is necessary to achieve adherence to the law. Moreover, the extent of the burden has been exaggerated. The FHLBB's proposed procedure stipulated a simple form which would be filled out initially by the loan applicant himself and which subsequently would require minimal handling by lender personnel.

There seems to be little merit to the Board's third concern. The avoidance of insult in soliciting racial and ethnic information is little more than a matter of tactfulness and technique, including a full explanation of the purposes for which the information will be used and an assurance of confidentiality.[27]

C. Civil Rights Staffing and Duties

Overall responsibility for civil rights matters has been assigned to the Deputy Director of the Board's Division of Supervision and Regulation. However, equal opportunity is but one of that official's many duties. Within the Division, no official designations for primary Title VIII responsibility have been made. Nonetheless, the Deputy Director has unofficially assigned primary responsibility for fair housing issues to one staff member. In addition, the Office of General Counsel has assigned similar responsibilities to a particular staff attorney. Both of these staff members are considered by the Board to be accountable for analysis of the Board's civil rights obligations and for the initial preparation of statements, training materials, and examination forms necessary to meet those obligations.

I. FEDERAL DEPOSIT INSURANCE CORPORATION [28]

A. Civil Rights Enforcement Mechanisms

1. Complaint Investigations

Complaints of any nature concerning lenders supervised by FDIC are processed almost exclusively by the Corporation's 14 regional offices.[29] The Regional Director of Bank Supervision determines the nature of the response to each complaint.[30]

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[25] The Board's opposition threatens the adoption of racial and ethnic data requirements by two other bank regulatory agencies. Both COC and FDIC have stated that they are opposed to the adoption of a data collection requirement unless it is imposed on all lending institutions at the same time. Recently, FDIC altered that position to the extent of publishing a proposed data collection regulation for public comment.

[26] Contrary to the Board's position, racial and ethnic data collection is an essential ingredient in ascertaining minority treatment by federally supervised lending institutions. The Board takes the position that racial data on borrowers would only confirm what can already be observed from an analysis of residential patterns. This position fails to consider the fact that residential patterns can and do result from a variety of factors—including income, discriminatory broker practices, and mortgage lending discrimination. Furthermore, residential patterns permit only a generalized study of discriminatory practices. Only an analysis of racial and ethnic data in conjunction with lending practices and residential patterns can adequately document the specific contribution that lenders make to the denial of equal homeownership opportunities.

[27] See U.S. Commission on Civil Rights, *To Know or Not to Know: Collection and Use of Racial and Ethnic Data in Federally Assisted Programs*, February 1973.

[28] This section was prepared without the benefit of complete information because FDIC's response to the Commission's questionnaire was not received until more than one month after it was due.

[29] The FDIC staff estimates that at least 90 percent of all complaints are so handled. Moreover, even complaints addressed directly to FDIC's headquarters are generally referred to a regional office, unless it is clear on its face that the complaint should be dismissed for lack of jurisdiction or similar reasons.

While the FDIC central office staff could not determine how many complaints concerning fair lending and employment had been received by the regional offices, it did state that its own office had received none since October 1971. The central office's lack of information reflects the fact that regional directors are not required to forward reports on complaints received and processed. Only those complaints which become the subject of an examination are brought to the central office's attention, since all examination reports must be forwarded to Washington. Until the Office of Bank Supervision makes someone in the central office responsible for matters related to civil rights compliance, there would appear to be little to be gained from requiring that complaint reports be forwarded from regional offices. Such central collection of complaint reports is fundamental to any compliance effort.

2. The Examination Process

FDIC's bank examination is a two-tiered process. Inspection and initial review are carried out by the Regional Director of Bank Supervision. Examination reports then are forwarded to the Washington office for final review. When a regional office identifies a violation of a law or regulation, it has an established but unwritten practice of sending the bank a letter requesting a report on correction of the violation. The regional office uses a "tickler" system to monitor each violation.

Regional office staffs use two basic tools in carrying out an examination: an examiner's manual and an examination report form. Both tools are substantially out of date and are reportedly being revised.

The report form contains sections calling for specific information on a variety of fiscal management subjects. It places no similar requirements on the examiner to report on Title VIII issues, although blank space is supplied to report violations of any law. A revised form requiring specific information regarding each of the agency's civil rights responsibilities should be developed as soon as possible.[31]

The examiner's manual, like the report form, contains no mention of Title VIII. A revised manual, expected to be completed by October 1972, reportedly will contain an extensive section on compliance with consumer laws and civil rights laws and regulations. In addition, FDIC's Office of Bank Supervision recently established a new Planning and Project Branch whose duties will include continuous updating of the examiner's manual with supplemental instructions.

At present, examiners receive no formal training regarding equal lending requirements, except for instructions on reporting violations of the poster and advertising portions of FDIC's nondiscrimination requirements.

B. Affirmative Action—Nondiscrimination Requirements

During the past seven months, in addition to adopting equal lending poster and advertising regulations,[32] FDIC has come to endorse the concept of requiring its regulatees to collect and maintain racial and ethnic data on all loan applications. The Corporation is drafting a proposed regulation, together with a reporting form for use by its examiners. Publication of the proposal is expected later this year.

Most significant is the fact the FDIC's commitment to this regulation is such that it has decided to proceed at least with publication of the proposed regulation, whether the other banking agencies do so or not. In addition to publishing the regulation for comment, FDIC plans a public hearing on the regulation.[33]

C. Civil Rights Staff and Duties

FDIC regional offices and the Office of Bank Supervision carry out such civil rights responsibilities as the agency presently acknowledges. There are no specific equal opportunity assignments in any of these offices. Civil rights assignments are made on an *ad hoc* basis by the Director of the Office of Bank Supervision or regional directors. Cooperation on legal issues, also *ad hoc*, is received from the Legal Division.

Within the Office of the Chairman, however, specific civil rights assignment has been made. The principal assistant to the Chairman is responsible for coordination of the Corporation's overall equal opportunity efforts. While the special assistant has a wide variety of additional duties, it is nonetheless valuable to have an individual designated to be specifically accountable for the Corporation's civil rights performance.

The absence of clear lines of responsibility, however, in the regional offices and, particularly, within the Office of Bank Supervision is inconsistent with the Corporation's apparently serious intent to improve the fair lending aspect of its examination process. Development of a requirement for collecting racial and ethnic data, and incorporating the requirement into the examination process, should proceed concurrently with the assignment of specific civil rights duties in those staffs. Only when such assignments are made can responsiblity be placed clearly. Only then do individuals feel both an obligation and an incentive to develop expertise and to devote the attention that effective enforcement demands.

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[30] Most complaints are investigated at the time of the banks next regular examination. In cases considered serious by the Regional Director, a special examination may be ordered. FDIC staff stated that a special examination was ordered recently of a Virginia bank which had provided a questionable response on the joint HUD-FDIC questionnaire.

[31] FDIC has stated that it plans an entirely new report form, to be issued when and if it adopts a racial and ethnic data collection requirement. Revision of the existing form should not, however, be delayed.

[32] See page 7 for a full discussion of a comparable regulation issued by the FHLBB.

[33] FDIC is the only Federal financial regulatory agency ever to indicate publicly its consideration of such a proposal.

VII. INTERAGENCY COOPERATION—JOINT HUD—FEDERAL FINANCIAL REGULATORY AGENCY QUESTIONNAIRES

In June 1971 the four financial regulatory agencies, in cooperation with HUD, sent questionnaires to 18,500 supervised lenders asking about their racial and ethnic policies and practices relating to mortgage lending. HUD received 17,400 replies and prepared a preliminary analysis of the responses. That analysis, which was sent to the four agencies in April of this year, state that the facts "support the need for a comprehensive program to assist lending institutions to comply with the . . . civil rights laws."

Of the four agencies, only the Federal Reserve Board reported any significant action on the results of the survey.[34] FDIC conducted one examination of a bank in Virginia. The FHLBB and COC have not made use of HUD's preliminary report.[35]

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[34] Prior to HUD's preliminary analysis, FRB obtained and received the responses of its regulatees. It conducted special examinations of 19 member banks which had indicated a refusal to make loans in certain minority areas. The Board's review of the lending policies of these banks found no violations of Title VIII. Board examiners reported that in nearly all cases the banks had refused to make loans in certain minority areas because of either pending urban renewal programs or an inability to obtain insurance on the property. Failure to obtain conventional insurance is not necessarily a legitimate reason for refusing a loan. Federally supported insurance is available in a majority of "high risk" urban areas, but in some cases lenders have been unwilling to accept the coverage such insurance provided.

[35] The FHLBB, before receiving HUD's report, sent its own questionnaire to 100 of the associations it supervises. The response indicated, among other things, that a sizable percentage of the associations refused to make loans in certain areas. The Board regards the response as inconclusive, however, and has taken no further action.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE (HEW) OFFICE FOR CIVIL RIGHTS (OCR)

Higher Education Division

I. OVERVIEW

The tools and procedures utilized by Higher Education staff at the Department of Health, Education, and Welfare's Office for Civil Rights are effective and comprehensive for conducting investigations. Substantive issues covered in compliance reviews or complaint investigations are broad. The means by which facts are obtained appear to be effective.

Nevertheless, the Office for Civil Rights has never invoked the enforcement mechanism for State systems or private institutions failing to meet their responsibilities under Title VI. This is the case despite lengthy negotiations seeking elusive "voluntary" compliance.

The Higher Education Division has failed to compel use of goals and timetables by its recipients. Failure to adopt criteria to determine whether discrimination has been eliminated represents a major weakness. In addition, the Higher Education enforcement program receives low priority, the evidence of which is inadequate staff and a correspondingly small number of compliance reviews.

II. CIVIL RIGHTS RESPONSIBILITIES

The Director of the Higher Education Division is responsible for enforcing the provisions of Title VI of the Civil Rights Act of 1964 and Executive Order 11246[1] in connection with employment at colleges and universities, the sex discrimination provisions of the Comprehensive Health Manpower Act of 1971 and the Nurse Training Act of 1971, as well as Title IX of the Education Amendments of 1972,[2] and any similar provisions.[3]

Specific responsibilities of the Higher Education Division include conducting compliance reviews of colleges and universities, negotiating appropriate corrective action, investigating individual complaints of discrimination, preparing recommendations for sanctions, and working with the General Counsel's office in preparing administrative enforcement proceedings when necessary.

III. COMPLIANCE MECHANISMS

Two major complementary elements of the compliance program are:

(a) collection of data from institutions of higher education, and

(b) conduct of onsite reviews.

A. Data Collection

The Compliance Report of Institutions of Higher Education requests information from public and private institutions concerning the racial and ethnic breakdown of part-time and full-time students, and their academic year.[4] A publication entitled *Racial and Ethnic Enrollment Data From Institutions of Higher Education, Fall* 1970 resulted from the 1970 survey.[5] Enrollment statistics obtained from the survey supply one of the primary bases for selecting institutions for review. The statistics indicate progress or lack of progress in serving minorities.

B. Compliance Reviews

Onsite reviews may be scheduled routinely, may be based upon deficiencies noted on survey forms, or may be triggered by complaints. About 150 man-hours are spent on a compliance review.

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[1] This Executive order prohibits employment discrimination on the basis of race, color, religion, sex, or national origin by Federal contractors and subcontractors. It requires them to take affirmative action to correct the effects of past discrimination.

[2] Title IX extends sex discrimination coverage to educational programs subject to Title VI provisions.

[3] The Veterans Administration has been assigned civil rights responsibilities for (A) proprietary (i.e., other than public or nonprofit) educational institutions, except if operated by a hospital, and (B) postsecondary, nonprofit, educational institutions other than colleges and universities, except if operated by (1) a college or university, (2) a hospital, or (3) a unit of State or local government (i.e., those operating such institutions as an area vocational school or a school for the handicapped). The Department of Agriculture is responsible for Title VI aspects of programs at land-grant institutions in which nonstudents are beneficiaries of Federal assistance. Such programs include the Extension Service, Experiment Stations, and 4-H.

[4] The survey does not require a sex designation.

[5] Increased minority attendance is viewed by OCR as an indication of successful implementation of the higher education program. The Fall 1970 survey (the survey is conducted every two years and is being conducted currently) shows that 10.5 percent of the reported 5 million undergraduates are minority students. OCR asserts that this figure represents a 19.2 percent increase in minority enrollment between 1968 and 1970. However, 33 percent of all minority undergraduates still are in predominantly minority schools, and 44 percent of black students are still in predominantly minority institutions.

During an onsite review, Higher Education staff members look for indications of discrimination in recruitment programs, admission standards, on—and off—campus housing, financial aid (including athletic scholarships), employment and job placement resources, extracurricular activities, and off-campus student training assignments.

In Fiscal Year 1969, OCR conducted 212 higher education compliance reviews. During each fiscal year thereafter, the number of reviews has declined. In Fiscal Year 1972, only 99 field investigations were conducted[6] of the more than 2,600 institutions of higher education receiving Federal assistance. Higher Education staff members attribute the decline to other program priorities and to limited staff.

Following an onsite review, a report (Compliance Review Report Under Title VI of the Civil Rights Act of 1964 for Institutions of Higher Education) is prepared for the Higher Education Division's internal use. The report covers information about the institution and its nondiscrimination policy, student admission policy, and counseling and tutoring. It contains summaries of interviews with administrators, faculty, students and community leaders regarding minority enrollment and treatment. The reviewer's evaluation is included, as well as suggested recommendations to be conveyed in a postreview letter to the chief official of the college or university visited. The recommendations would, if implemented, correct deficiencies and bring the institution into conformity with Title VI.

Responses from institutions normally are expected within 60 days. Replies are monitored unsystematically by regional staff. Without even performing followup reviews, HEW has declared schools in compliance if they have merely indicated that changes are planned or contemplated.[7]

According to OCR, Title VI violations have been discovered in a substantial number of the 99 institutions reviewed in Fiscal Year 1972. Among typical violations: failure to recruit for minority applicants in a manner comparable to the recruitment of nonminority applicants; failure to assure nondiscriminatory access to services (e.g., assistance in obtaining off-campus housing or employment); and failure to assure conduct of institution-supported activities in a nondiscriminatory manner.

Of the 99 colleges and universities reviewed in Fiscal Year 1972, 55 were deemed to be in compliance. The remaining institutions are negotiating with OCR. There is no indication that any of the institutions not in compliance will be the subject of enforcement action, despite the fact that some reviews were conducted either in 1971 or early 1972.

OCR has never used its sanction power—termination of Federal assistance—except in instances where institutions have failed to submit a form assuring compliance with Title VI. Nor has any institution been found in noncompliance in an administrative hearing. In fact, no institution has ever been sent a Notice of Opportunity for Hearing.[8]

Voluntary compliance is the mechanism used exclusively by OCR in enforcing Title VI. Although OCR is required to seek voluntary compliance, it is important that negotiations continue only for a reasonable time before the sanction available to OCR is applied.

C. Complaints

Headquarters staff received 84 complaints during Fiscal Year 1972, although other complainants may have written directly to the regional offices. If the regional office resolved the problem, headquarters may never know about the complaint.

Typical complaints charge discrimination in admission policies, discrimination in academic programs because of national origin, or racial discrimination in athletic programs. In some cases, investigations are made. In others, an early onsite review is scheduled, during which the complaint is investigated. Still other complaints are handled by telephone or letter.

Staff work and analysis during complaint investigations are generally good. Discrimination problems are resolved through negotiation.

IV. MISCELLANEOUS

A. Compliance and State Systems of Higher Education

Past compliance activities have included negotiations with States which traditionally operated segregated systems of higher education. West Virginia and Missouri have integrated their systems, but the student bodies of the colleges and universities in the other 17 systems of higher education continue to be essentially segregated.[9]

Onsite reviews were conducted in 1968 and 1969 in ten State systems. Under OCR procedures, an outline of a desegregation plan is due 120 days after it is requested. A final plan is due 90 days after OCR has commented on the outline. Nevertheless, almost four years after onsite reviews were conducted, not a single acceptable plan from these systems has been negotiated. Indeed, negotiations have not been continued in Fiscal year 1972. Despite the lack of change in the systems in four years, OCR reports their status as "in compliance." The OCR staff obviously has decided not to use enforcement mechanisms against these State systems and has been unable to devise other mechanisms to bring the institutions into compliance.

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[6] More than 50 percent of the institutions reviewed were private colleges. Most reviews were conducted in institutions located in States having sparse minority populations.

[7] Yet a sample letter submitted to this Commission indicates lack of substantial progress by the time of a second review in October 1971, despite recommendations following a 1969 review.

[8] A Notice of Opportunity for Hearing is the first step in formal administrative proceedings against an institution. Allegations of compliance with Title VI are set forth by HEW, and the institution is notified of the opportunity to be heard on the charges.

[9] Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, and Virginia.

B. Policy and Planning

No policy has been formulated for disestablishing racially dual State systems of higher education. In addition, there have been no special reviews or policy formulations directed to national origin minorities: e.g., Spanish surnamed students.[10] OCR staff members do not believe that Title VI requires colleges to provide any special services to students in connection with language problems, although the Office does encourage school officials to assist parents applying for financial assistance when parents have difficulty reading English.

HEW has not employed goals and timetables to correct deficiencies at institutions of higher education. For example, if a university recruits nationally or is in an area of heavy minority concentration, it is appropriate for that university to be required to set a goal for the number of minority students to be enrolled within a given time. This mechanism also is applicable to correcting past discriminatory practices in recruitment, financial assistance, and housing. Without such a measurable standard, it is difficult to evaluate compliance efforts.

OCR makes known no long-range plans for upgrading Title VI enforcement in higher education. Staff members merely indicate that they will continue to review federally assisted colleges and universities for fulfillment of Title VI responsibilities.

V. STRUCTURE AND STAFF

The Higher Education Division is a new division, created in July 1972 to enforce Title VI provisions for colleges and universities. Previously, OCR's Elementary and Secondary Education Division had responsibility for Title VI compliance in higher education, and contract compliance in institutions of higher learning was the responsibility of the Contract Compliance Division. The new Higher Education Division is on the second tier of the OCR organization chart. Following the first tier—comprised of the Director's office, the Director's special assistants, and the Office of General Counsel—is a second tier of assistant directors responsible for management, planning, public affairs, congressional affairs, and special programs. In addition, there are four divisions: Contract Compliance, Health and Social Services, Elementary and Secondary Education, and Higher Education.

The Higher Education Division has two branches: one for Title VI and Health Manpower and the other for Executive Order 11246.[11] Proposed Higher Education branches, generally comparable to the headquarters structure, are being created in six regional offices.[12] The remaining four regional offices will continue to function without a Higher Education Branch until personnel allocations increase.[13]

Higher Education's headquarters staffing includes 13 staff members. Eight work on Executive Order 11246 matters and five divide their time between Title VI and Health Manpower. Of these five, all devote more than 50 percent of their time to Title VI matters. Of the six regional offices having Title VI and Health Manpower staff, Dallas has two professional staff members and the other five have one each. OCR reports that these staff members devote more than 50 percent of their time to Title VI.[14] The Title VI and Health Manpower Branch clearly has insufficient manpower to cover these two critical areas.

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[10] This contrasts with detailed requirements issued by HEW in May 1970 to elementary and secondary school systems concerning discrimination against national origin children.

[11] The Comprehensive Health Manpower Act of 1971 provides funds for improvement of schools of medicine, for student loans, and for other expenses related to training health professions personnel. OCR is responsible for enforcing provisions of the act which prohibit fund recipients from discriminating on the basis of sex in the admission of individuals to the training programs. For a definition of Executive Order 11246, see footnote 1.

[12] These six regional offices are in New York, Philadelphia, Atlanta, Chicago, Dallas, and San Francisco.

[13] These four regional offices are in Boston, Kansas City, Denver, and Seattle.

[14] There are 55 professional staff members in regional offices who devote their time to administration of Executive Order 11246. One regional office has nine staff members working on this issue, another has one, and several have between five and eight. In addition, three attorneys in the Civil Rights Division of the Office of the General Counsel of HEW provide legal assistance to the Higher Education Division and its regional staff with regard to Title VI and Executive Order 11246.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE (HEW) OFFICE FOR CIVIL RIGHTS (OCR)

I. OVERVIEW

HEW's OCR has shifted its compliance emphasis toward Emergency School Assistance Program (ESAP) reviews. Simply terminating one program grant, as is the case in ESAP compliance, is not as persuasive as complete Federal fund termination. In addition, HEW has de-emphasized use of the Title VI enforcement sanction in favor of voluntary negotiations, but there is no indication that this approach is succeeding.

National origin reviews are being conducted in several parts of the country with a major effort being made to cover extremely large school districts such as Boston and New York. The estimate of 25,000 man-hours to review one major city suggests that unless there is an increase in HEW staff, most districts will be ignored simply because of staffing limitations.

Increasing jurisdiction which HEW now has (Emergency School Aid Act , ESAA, and sex discrimination) necessarily will cause further dilution of Title VI efforts. Without substantial staff increases, OCR cannot adequately monitor voluntary and court-ordered school desegregation, ESAP civil rights assurances, and sex discrimination, and conduct national origin reviews. Further, even if additional staff is obtained, OCR's lengthy training process will need to be expedited if new personnel is to be used effectively.

The assignment of so few lawyers to the Civil Rights Division in the Office of General Counsel necessarily serves as an enforcement restraint because of limited case coverage and delay in reaching cases. The size of the legal staff is clearly inadequate. HEW's tendency to refer substantial numbers of cases to the Department of Justice, rather than pursuing administrative enforcement, may be a reflection of this understaffing. The same may be true of the failure to follow up on cases referred to the Department of Justice.

HEW has undermined the effort to secure compliance with *Swann* by refusing to require use of all available techniques to secure the most effective desegregation plan, including transportation. Moreover, OCR has failed to deal substantively with the question of disproportionate minority enrollment in schools where the minority is less than 50 percent.

There has been virtually no effort to prevent flow of Federal funds to nonpublic schools which are engaging in discriminatory practices. The growth of nonpublic schools, especially in the South, makes it imperative that attention be paid to this issue lest the national desegregation effort be subverted.

HEW has an impressive structure and mechanism for securing compliance, as well as sophisticated monitoring techniques and a well-trained staff. Its compliance and enforcement effort has been blunted, however, by Administration policies on school desegregation which have lowered the standard of compliance and effectively eliminated administrative enforcement from the arsenal of enforcement weapons.

II. CIVIL RIGHTS RESPONSIBILITIES

The Office for Civil Rights is responsible for enforcing Title VI of the Civil Rights Act of 1964 as it relates to elementary and secondary education. The range of acts for which OCR has responsibility includes: the Elementary and Secondary Education Act of 1965, the National Defense Education Act of 1958, the Vocational Education Act of 1963, the Manpower Development and Training Act, and the Education Professions Development Act.[1] OCR also is responsible for enforcing Title IX of the Education Amendments of 1972, which in effect amends Title VI to include sex.[2]

The Office of Education has primary responsibility for enforcing the substantive provisions of the Emergency School Assistance Program (ESAP).[3] ESAP grantees, in order to be eligible, are required to give nondiscrimination assurances similar to those required under Title VI: namely, in teacher assignments; in the dismissal, demotion, hiring, and promotion of faculty; in extracurricular activities; in disciplining students; and in assigning students to classes.[4] The Office for Civil Rights, in consultation with the Commissioner of Education, undertakes to determine that civil rights assurances are being met. The ESAP program, unlike that for Title VI, calls for both preaward and postaward onsite reviews.[5]

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[1] Among the programs covered under these acts are Financial Assistance to Local Educational Agencies for the Education of Children of Low-Income Families, School Library Resources, Bilingual Education, Supplementary Education Centers and Services, and Education of Handicapped Children.

[2] Section 901(a) of Title IX of the Education Amendments of 1972 provides in part that "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. . . ."

[3] Title VII of the Education Amendments of 1972, cited as the Emergency School Aid Act, will replace the ESAP program when funds are appropriated. Until that time, ESAP operates under a continuing resolution.

III. STAFFING AND ORGANIZATION

The Office for Civil Rights is directed by a Special Assistant to the Secretary of HEW. Within OCR, enforcement of school nondiscrimination requirements is the responsibility of the Elementary and Secondary Education Division. The Division is in the second tier of the OCR organization chart. The first tier consists of the Director's Office, his special assistants, and the Office of General Counsel. The second tier consists of assistant directors, and they have responsibility for management planning, public affairs, congressional affairs, and special programs. There are four divisions in the second organizational tier: Contract Compliance, Health and Social Services, Elementary and Secondary Education, and Higher Education.

In June 1972, of 708 OCR staff members, the Elementary and Secondary Education Division had 177 professional staff members who spent more than 50 percent of their time on elementary and secondary education Title VI enforcement. This is a slight increase over Fiscal Year 1971. These staff members were located in the Washington, D.C., Southern, and Northern Branches[6] of OCR. In light of OCR's responsibilities and its jurisdiction over sex discrimination and ESAA, the staff devoted to elementary and secondary education is clearly inadequate. OCR administrators have requested 350 additional positions to fulfill their responsibilities under the Emergency School Aid Act (ESAA). Senior staff, however, suggest that there will be a substantial time lag before a viable enforcement cadre will be available, considering that training an investigator requires at least a year.[7]

The Office of General Counsel, Civil Rights Division (GCR), which is supervised by an assistant general counsel and deputy assistant general counsel, provides legal services to OCR through three branches.[8] One branch is responsible for ESAP, Vocational Education, and Educational Television. Another branch is responsible for Elementary and Secondary Education and Special Projects. The third branch is responsible for Contract Compliance, Health and Social Services, and Higher Education.

The size of the legal staff has not kept pace with the growth of the OCR staff. In 1967, when OCR's budget was $3 million, OCR had 278 staff members and the Office of General Counsel had 32 staff members—17 professionals and 15 clericals. Currently, the OCR budget is $11.8 million, and there are 708 staff members on the payroll.[9] GCR now has 33 staff members—19 attorneys and 14 clerical staff members. In addition, senior staff members in GCR indicate that in Fiscal Year 1972 there have been only three to seven attorneys who actually devote their time to elementary and secondary education. Senior staff members in GCR also indicate that more time is required now to prepare for administrative enforcement hearings than in previous years and that the duration of the hearings is longer.[10] Thus, responsibilities have continued to increase without a corresponding increase in GCR staff.

IV. COMPLIANCE MECHANISMS

A. Data Collection and Use

OCR annually conducts a survey of enrollment by race and ethnicity which covers the Nation's public school systems.[11] The data are extremely detailed and reveal enrollment and faculty assignments by school, as well as pupil assignment within schools. These data provide a good basis for determining compliance.

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[4] Nondiscrimination requirements of ESAP regulations overlap or correspond to Title VI requirements. Compliance activity carried out pursuant to ESAP, where successful, has served to bring about Title VI compliance.

[5] The ESAP program was funded in two parts, and onsite reviews conducted under the first appropriation are called ESAP I reviews. Reviews conducted following the second appropriation are designated ESAP II reviews.

[6] The Southern Branch covers Regions III (less Pennsylvania and Delaware), IV, and VI. The Northern Branch covers Regions I, II (plus Pennsylvania and Delaware), V, VII, VIII, IX, and X. Of the 177 professional staff members, 94 are in the 10 field offices. Four field offices have less than four staff members (Seattle, Boston, Kansas City, and Denver). The remaining field offices (New York, Philadelphia, Atlanta, Chicago, Dallas, and San Francisco) have from nine to 19 staff members. Eight of the 10 field offices have no Native Americans or Asian Americans on their staffs, and four have no Spanish surnamed Americans.

[7] The year may follow a period of up to 90 days before the employee is actually hired.

[8] Although the Office of General Counsel, Civil Rights Division (GCR), is shown on the first tier of the OCR organization chart, it actually is a part of HEW's overall Office of General Counsel.

[9] The Fiscal Year 1973 appropriation request of OCR, not yet passed by Congress, is $14,245,000. Of that amount, $9,848,240 is for Title VI enforcement and $4,396,760 is for contract compliance.

[10] Indeed, preparation time for the Boston Administrative Enforcement Hearing (the Notice of Opportunity for Hearing alleges that the school district has acted in ways to cause and perpetuate racial isolation in elementary and secondary schools) is estimated to have required full-time commitment of three lawyers and part-time assistance from other attorneys for a six-month period. The reason advanced for increased hearing time is that greater problems of proof exist because more subtle forms of discrimination are under attack—i.e., testing, ability grouping, assignment and treatment of students within schools, and the provision of equal educational services. Problems of proof increase as OCR moves away from the classic dual school structures of the South.

[11] In addition to the number of students in a school district by race and ethnicity, similar questions are asked regarding professional staff. Questions concerning student retention rates by race and ethnicity within schools are also included. Questions also are directed to bilingual education, new school construction, and acquisition of sites. In 1972, 8,000 districts and

Further, OCR has an effective system for utilizing these data for compliance purposes. Faculty data provide a simple means by which to determine compliance with desegregation requirements concerning faculty assignment, both systemwide and within particular school. Data from the survey forms also reveal whether a school system expects to increase the number of predominantly minority schools.

B. Complaints

Investigating complaints made by individuals within school districts is one method of monitoring utilized by OCR.[12] Complaints include allegations of unfair treatment of minority students, discriminatory student assignments, racially separate facilities, failure to hire minority teachers, and racially motivated discharge or dismissal. Complaints may trigger a full-scale Title VI onsite compliance review or be incorporated into a review underway. Complaints may be investigated onsite without a full onsite compliance review, may be referred to another agency, or may be negotiated by letter.[13]

Thorough reports are prepared, including comprehensive recommendations for remedial action. In one case, for example, these were among the recommendations for corrective action: that principals demoted in the process of desegregation should be compensated for loss of salary; that an affirmative plan should be developed for appointing black principals; and that black employees should be actively recruited on both professional and nonprofessional levels. Reviewing officials also suggested that ESAP funds be immediately suspended, that OCR request the Department of Justice to initiate a suit against the school district, and that a plan for remedial action be negotiated.

C. Onsite Compliance Reviews

HEW also has established effective procedures for systematic onsite reviews for purposes of monitoring Title VI compliance.[14] HEW has developed a sizable and experienced staff, capable of carrying out compliance activities effectively. Reports and recommendations resulting from onsite reviews are generally of high quality.

From the standpoint of the structure of the monitoring process, there is little question that HEW is ahead of all other Title VI agencies. The compliance process breaks down at the point at which findings and recommendations are to be put to use following a review. Compliance standards have been lowered, and enforcement mechanisms are not being put to full use to eliminate discrimination within school systems.

V. METHODS OF ENFORCEMENT

Three methods of enforcement are available to OCR in seeking Title VI compliance by elementary and secondary school districts: voluntary negotiations, referral to the Department of Justice for possible litigation, and administrative enforcement leading to termination of Federal financial assistance. In recent years, use of administrative enforcement has been de-emphasized in favor of voluntary negotiations.

A. Voluntary Negotiations

During Fiscal Year 1972, voluntary negotiations were utilized in the Southern and border States 185 times. These ranged from protracted conferences and discussions—as in the case of Prince Georges County, Md.—to simple telephone calls. In view of the current emphasis on this method of enforcement and the scope of the school segregation problem that remains in the South, this is not an impressive number. Moreover, OCR gives no indication of how many of these negotiation efforts have resulted in compliance.

B. Referrals to the Department of Justice

In Fiscal Year 1972, files on 73 school systems were referred to the Department of Justice for possible litigation. OCR ordinarily does not follow up to see what action is taken by the Department of Justice or, indeed, whether any action at all is taken. The Depart-

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72,000 schools will be surveyed. Similar surveys were conducted in 1968 and 1970. In 1969 and 1971, 2,850 districts and approximately 37,000 schools were surveyed. OCR indicates that these surveys are limited and are not intended to be representative of the Nation as a whole. The survey includes districts which were in litigation or under a court order to eliminate the dual system, were operating under a voluntary Title VI plan to eliminate the dual school system, had one or more schools containing 50 percent or more minority enrollment, or had a total minority enrollment of 10 percent or more.

[12] During Fiscal Year 1972 the Education Division, Southern Branch, received 341 complaints concerning public schools. During the same period the Northern Branch received 100 complaints. Complaints were incorporated into investigations of districts already the subject of onsite review to determine compliance with Title VI or with a May 25, 1970, Memorandum on school districts with more than five percent national origin-minority group children. A review of the Boston school system was initiated in response to a complaint. On June 2, 1972, a letter was sent to the Boston school superintendent from the OCR director summarizing OCR findings and allegations resulting from the Title VI review. A Notice of Opportunity for Hearing was also mailed. Hearing was scheduled for the week of Sept. 18, 1972.

[13] OCR claims that its Northern Branch received 100 complaints in Fiscal Year 1972. Of the 100 complaints listed in Appendix *I-E*, (Elementary and Secondary, Northern Branch, Complaints Reviewed, July 1, 1971-June 30, 1972), however, 14 appear to be complaints received in Fiscal Year 1971. Nevertheless, analysis of the 100 complaints reveals that 40 are still pending and 13 others have been transferred to other agencies. In 12, OCR lacked jurisdiction. It is impossible to determine from the information given in Appendix *I-E* whether all the complaints listed as "closed" were actually "resolved," and how many were resolved satisfactorily.

[14] Between July 1, 1971, and June 30, 1972, the Southern Branch of the Elementary and Secondary Education Title VI staff conducted 339 onsite compliance reviews. Of these, 220 were ESAP II onsite reviews (including both pre- and post-ESAP II funding reviews), 24 involved districts with large numbers of national origin-minority group students, and 95 involved other Title VI compliance problems.

ment of Justice sometimes informs HEW of action it is taking on its own volition, particularly when additional information or assistance is needed. OCR does not obtain reports from Justice on the status of matters referred to the Department. When the Department of Justice fails to institute litigation, no further action generally is taken by either Justice or OCR.

C. Use of Sanctions—Administrative Enforcement

In the Southern and border States in Fiscal Year 1972 only three Title VI enforcement proceedings were brought—Prince Georges and Wicomico Counties, Md., and Tift County, Ga.[15] Fifteen districts (in addition to Prince Georges County) were offered opportunities for hearing in Fiscal Year 1972 in connection with ESAP violations. Of that number, according to OCR, two districts had their ESAP funds terminated (LaSalle and Orleans Parishes, La.). In one case (Pine Bluff, Ark.) the hearing examiner ruled in favor of the district. Action taken beyond the Notice of Opportunity for Hearing is not reported for the remaining 12 districts.[16]

In those few cases where Title VI administrative enforcement proceedings are brought, they are characterized by inordinate delay. For example, Prince Georges County, one of two border State districts offered an opportunity for hearing under Title VI because of *Swann* violations, is also being sued by private citizens in Federal court. The administrative enforcement proceeding, initiated in September 1971, continues. In early September 1972, the hearing examiner ruled orally that the district was in noncompliance. He did so without giving the district an opportunity to present evidence. Subsequently the hearing was reopened and Prince Georges County was provided an opportunity to present its witnesses. Prince Georges County attorneys simply cross-examined Government witnesses and did not present the district's case. The hearing has now been closed and a decision by the hearing examiner is awaited. The Federal District Court already has ruled that high schools must desegregate. OCR's Director concedes that the matter undoubtedly will be settled in the courts before it is resolved in the administrative process.

OCR has prepared a chart showing the status of districts reviewed in the North and West.[17] In only one district—Ferndale, Mich.—has there been a determination of noncompliance. This determination was affirmed by the Secretary, but the district has appealed to the U.S. Court of Appeals for the Sixth Circuit. Five districts have been sent letters of noncompliance, a preliminary step leading to a Notice of Opportunity for Hearing and possible fund termination.[18]

In six other Northern and Western districts, compliance activities have been discontinued because of private or Department of Justice suits or assumption of enforcement responsibility by the Department of Justice.[19] Thus, a review of OCR activity indicates that even where school systems are found in noncompliance, only rarely is the enforcement sanction, termination of Federal financial assistance, used.[20] At best, ESAP terminations involve the ESAP funding itself rather than Federal financial assistance generally. The principal enforcement mechanism to secure compliance following the exhaustion of voluntary efforts has been virtually abandoned.

VI. STANDARD OF COMPLIANCE

Enforcing Title VI compliance by de-emphasizing administrative enforcement in favor of voluntary negotiations represents a serious weakness in OCR's effort. Equally important is that the standard by which OCR determines compliance has been lowered below that enunciated by the Supreme Court in *Swann* v. *Charlotte-Mecklenburg Board of Education.*[21] The principal way in which this standard has been lowered is in relation to transportation. Although the Supreme Court, in *Swann*, specifically recognized transportation as a viable technique for desegregating schools, OCR does not require transporting students to school attendance areas not immediately adjoining the one to which they are currently assigned.

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[15] The three districts had refused to comply with the requirements of the *Swann* decision. Prince Georges County also was offered an opportunity for hearing because of violations of ESAP II regulations. The district refused to assign teachers in accordance with the *Singleton* ruling. *Singleton* v. *Jackson Municipal Separate School District*, 419 F. 2d. 1211 (5th Cir. 1969) required that the racial composition of faculty in each school in the district be roughly the same as the overall racial composition of the student enrollment in the system.

[16] Twelve of the 15 districts were in Region IV, and the remaining three were in Region VI. No districts were cited in Region III, which includes Southern and border States. Southern and border States received most of the ESAP money.

[17] HEW Title VI Compliance Reviews of Elementary and Secondary School Districts in the Thirty-three Northern and Western States; Review Status as of June 30, 1972. Of the 76 Northern and Western districts listed in this report, 29 are being reviewed by the regional offices, the national office, or GCR. Twenty-five of the districts were visited in Fiscal Year 1972. Some districts being reviewed had been visited as early as April 1968, yet compliance status still has not been determined. Reports are being written or material is being updated on several other districts before compliance status is resolved. OCR maintains that the evidentiary burden in showing *de jure* segregation in non-South school districts is an obstacle to bringing about substantial change in the extent of racial isolation in the schools. OCR anticipates clarification in the Denver school case, *Keyes* v. *School District No.* 1, 303 F. Supp. 279 (D. Colo. 1969), in the fall 1972 Supreme Court term.

[18] The districts sent letters of noncompliance are: Winslow, Ariz.; Berkeley, Calif.; East Chicago, Ind.; Boston, Mass.; and Mount Vernon, N.Y.

[19] Districts falling into these categories are: San Francisco City Unified, Calif.; Pasadena, Calif.; Waterbury, Conn.; Kansas City, Kans.; Westwood Community (Dearborn Heights, Mich.); and Omaha, Nebr.

[20] HEW is a party defendant in *Adams* v. *Richardson*, in which it is alleged that HEW is violating the Civil Rights Act of 1964 and the fifth and fourteenth amendments to the U.S. Constitution by failing to terminate Federal funds to elementary and secondary schools and colleges and universities which continue to discriminate. In addition, HEW has been sued to force access to information concerning enforcement of Title VI in *Center for National Policy Review on Race and Urban Issues* v. *Richardson*. Where termination orders exist, the appeals process often extends for long periods of time, making a seeming mockery of the Title VI enforcement sanction. In calendar year 1971, there were only two orders for fund termination. In Fiscal Year 1972, no district was terminated.

[21] 339 U.S. 926 (1971).

Moreover, although the Supreme Court, in *Swann*, specifically stated that there is a presumption against school systems in which the racial composition of schools is substantially disproportionate to the district's overall racial composition, OCR virtually ignores schools where such conditions prevail if they are less than 50 percent minority.

Neither the weakened standard of compliance nor the failure to use the sanction can be attributed to the inadequacies of HEW's civil rights structural mechanisms. Rather they are related to policy decisions, made at the highest levels of the Administration, with which HEW officials are obliged to comply.

VII. NATIONAL ORIGIN REVIEWS

A May 25, 1970, Memorandum has provided the basis for increasing emphasis on national origin compliance reviews.[22] As of May 22, 1972, 27 districts having more than five percent national origin-minority group children were under review.[23] Ten additional districts were scheduled for review during 1972; 12 districts had been notified of noncompliance and had negotiated plans acceptable to HEW; one district had been notified of noncompliance and had not yet negotiated a plan; and three districts had been notified of noncompliance and had refused to negotiate or submit plans. OCR gives no indication of what action will be taken against the latter three districts.

OCR has developed a manual which sets criteria for reviewing school districts with national origin-minority group children to assist and guide civil rights specialists in the Elementary and Secondary Education Division. The manual currently is still in draft form, although the May 25 Memorandum was issued more than two years ago. OCR was assisted in developing the manual by Mexican American educational experts and psychologists who are members of the Task Group for Implementation of the May 25, 1970 Memorandum. The manual effectively and comprehensively outlines areas of concern and information needs regarding national origin-minority group children.[24]

The only district now facing a hearing concerning national origin-minority group children is Boston, Mass.[25] OCR staff members estimate that 25,000 manhours were spent on the Boston review, in contrast to the average investment of 180 manhours. The Boston manhour investment suggests the enormous personnel commitment necessary to conduct compliance reviews in urban school systems outside the South. A review scheduled to begin in the fall of 1972 will focus on national origin discrimination, particularly against Puerto Rican students, in New York City. HEW officials estimate that the review will require 25 professional staff members working full-time for at least 2 years.

Problems of national origin-minority group discrimination in the North and Southwest have long demanded OCR's urgent attention. The fact that OCR has moved in this direction is encouraging. The magnitude of OCR's effort, however, is inadequate in light of the severity of the problems, as revealed by this Commission's own recent report, *The Excluded Student*.

VIII. NONPUBLIC SCHOOLS

The Office of Education's National Center for Educational Statistics conducted a survey of nonpublic elementary and secondary schools in the fall of 1970. The Center's earlier survey was conducted in 1968.

OCR comments that these surveys are not conducted pursuant to legal requirements and that the response and the validity and completeness of data can be expected, therefore, to fall short of that in other HEW surveys. The nonpublic elementary and secondary schools whose cooperation the National Center seeks to enlist place restrictions on data for public release. The Center, accordingly, makes only aggregate figures available, and not individual district figures.

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[22] Memorandum to School Districts with more than Five Percent National Origin-Minority Group Children, from J. Stanley Pottinger, Director, Office for Civil Rights; Subject: Identification of Discrimination and Denial of Services on the Basis of National Origin. Four major areas of concern are described in the Memorandum: (1) School districts must take affirmative steps to rectify a language deficiency whenever it excludes national origin children from effective participation in its education program, (2) school districts must not assign pupils to emotionally or mentally retarded classes on the basis of deficient English language skills, (3) ability grouping or tracking must be designed to increase language skills, and (4) school districts are responsible for notifying parents of national origin-minority group children regarding school activities.

[23] As of June 30, 1972, reviews had been made in school districts in such States as: Arizona (Tempe, Tucson District No. 1); California (Bakersfield City Elementary and Fresno City Unified); Colorado (Loveland, Colorado Springs No. 1, Fort Lupton); Indiana (East Chicago); Kansas (Garden City, Goodland, Holcomb, Ulysses); Massachusetts (Boston); Michigan (Saginaw); New Jersey (Hoboken, Passaic, Perth Amboy); Utah (Ogden); and Wisconsin (Shawano).

[24] The manual contains three basic sections. Section one concerns preparation for conducting compliance reviews regarding the delivery of equal educational services to minority group children. Section two concerns analysis of children's educational performance through interviews with school personnel, collection of language and testing data, and examination of ability grouping/tracking, special education, and school curriculum. Section three provides a review of commonly used standardized tests.

[25] A letter of noncompliance was sent to the Superintendent of Public Schools in Boston by the director of the Office for Civil Rights on June 2, 1972. Hearing was scheduled for the week of September 18, 1972.

In 1970–71, according to the survey, there were 16,732 nonpublic schools with an enrollment of 5,271,718. Catholic school enrollment has declined 17 percent since 1961–62, but other nonpublic school enrollment has increased 66 percent.[26]

Since 1966, when the first compliance review of nonpublic schools was conducted, there has been a gradual increase in the number of reviews. The figure rose from 5 in 1966 to 111 in 1972, making the total 243.

Of the systems reviewed, 205 have been declared in compliance. Thirty-seven have been declared in noncompliance, but no further action has been taken. In one case, in which the review report recommended a determination of noncompliance, a final determination by the OCR director has not yet been made.

OCR offers specific recommendations to nonpublic systems and schools concerning eligibility to participate in Federal programs. If the systems or schools fail to adopt the suggested steps or equally effective steps, they are not certified as eligible for participation in Federal programs.[27]

Compliance activities in nonpublic education have been limited, and most HEW personnel have never conducted such a review. Those reviews that are conducted are perfunctory and may involve no more than a telephone call.

HEW has an obligation to enforce Title VI in this field but has clearly neglected to do so. Such neglect may cut into public school attendance. There has been a 66 percent attendence increase in non-Catholic, nonpublic schools. This statistic causes concern since the increase has occurred primarily in the South, where opposition to school desegregation is strongest. Failure to enforce Title VI compliance of nonpublic schools may intensify the transfer of white public school students and further undermine desegregation of public schools.

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[26] The percentage of elementary and secondary pupils attending nonpublic schools in 1970 was 10 percent, compared with 13 percent a decade earlier.

[27] Standards deal with admission and employment practices, recruitment of students and staff, administration of scholarships, and publication of nondiscriminatory policies.

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE (IRS)

I. OVERVIEW

IRS civil rights actions continue to be inadequate. Although IRS has examined a sampling of private schools, it has not organized itself effectively to meet its duties. Furthermore, IRS continues to take a restricted and legally unsound position on important policy issues and has not promptly investigated situations in which it has reasonable notice that discrimination probably was occurring. Additionally, IRS has failed to coordinate with the Department of Health, Education, and Welfare despite HEW's willingness. If IRS is to improve significantly in the next year, its sensitivity and commitment will have to increase substantially.

II. CIVIL RIGHTS RESPONSIBILITIES

Internal Revenue Service policy on discrimination by nonpublic schools requires each school to be one that:

> . . . admits the students of any race to all the rights, privileges, programs and activities generally accorded or made available to students at that school and [ensure] that the school does not discriminate on the basis of race in administration of its educational policies, admissions policies, scholarship and loan programs, and athletic and other school-administered programs.[1]

Only schools with racially nondiscriminatory enrollment policies are eligible for exemption from Federal income taxes. Likewise, only these schools may receive charitable contributions that may be deducted by the donors.[2] This policy has been judicially sanctioned in the *Green* decision.[3]

The nondiscrimination policy still does not extend to teacher employment, despite the fact that the *Green* decree required IRS to collect racial data on the faculty and administrative personnel of private academies in Mississippi. IRS insists that these data are to be used only to determine whether the academies discriminate in enrollment. The agency further argues that no public policy requires it to consider private school employment, since employment practices of educational institutions were excluded from the coverage of Title VII of the Civil Rights Act of 1964. This reason, questionable in the first place, is now clearly invalid in view of recent amendments to Title VII.[4] The IRS position also ignores the fact that the Department of Health, Education, and Welfare for years has prohibited faculty discrimination in public schools under Title VI of the 1964 Civil Rights Act.[5]

Since the *Green* decision was limited to private schools in Mississippi, IRS steadfastly refuses to require schools outside Mississippi to submit routinely information which the court ordered IRS to obtain from Mississippi schools.[6] Schools outside Mississippi are required to submit only a statement affirming that their admissions policies and practices are nondiscriminatory and indicating how this has been publicized. These declarations do not have to be accompanied by any specific statistical data.

IRS asserts that the court-ordered information will not be required from schools outside Mississippi "unless there is a reason to doubt the good faith of a school's declaration of a nondiscriminatory policy and an examination is conducted." Without statistical data, however, there is no apparent way to ascertain whether a school's declaration was made in "good faith." IRS has indicated previously that the decision to conduct an examination is a matter of judgment. Since this Commission is unaware of precisely what circumstances might cause a declaration to be questioned and a school to be examined, it is difficult to view the declaration as anything more than perfunctory paper compliance. Experience at other Federal agencies has demonstrated that this is an unreliable means of monitoring compliance.[7]

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[1] Revenue Ruling 71-447, Internal Revenue Bulletin 1971-40, Oct. 4, 1971.

[2] The significance of granting tax-exempt status to private segregated schools was clearly noted in litigation involving IRS:

> Even at a time when Mississippi state grants for tuition were available (a practice later held unconstitutional) the officials of the private segregated schools considered it important to obtain the support involved in the obtaining of certification of tax exemption. This was in part based on what the officials termed the psychological help to the school, from the public reaction to what was considered an approval by the Federal Government. *Green* v. *Kennedy*, Order for Preliminary Injunction and Opinion, 309 F. Supp. 1127, 1135 (D.D.C. 1970).

[3] *Green* v. *Connally*, 330 F. Supp. 1150 (D.D.C. 1971) (three-judge panel), *aff'd sub nom Coit v. Green*, 404 U.S. 997 (1971). The court held that the Internal Revenue Code does not permit tax-exempt status to segregated private schools or the deduction of charitable contributions.

[4] See Equal Employment Opportunity Act of 1972 (Public Law 92-261). The exemption for educational institutions applies only "to the employment of individuals of a particular religion to perform work connected with the carrying on by such . . . educational institution . . . of its activities." (Section 702)

[5] While the question of applicability of Title VI to tax benefits was not decided in *Green*, the Commission continues to believe that the proscription imposed by HEW can be validly applied to private schools by IRS.

[6] This includes a racial breakdown of students applying and attending, the disposition of scholarship and loan funds by race, and a racial breakdown of faculty and adminstrative staff.

A "meaningful" number of minority students is viewed by IRS as evidence of a racially nondiscriminatory enrollment policy.[8] The term "meaningful," however, is not defined. Further definition problems arise regarding national origin discrimination. IRS states that discrimination against any "race" violates the agency's policy. This position does not take into account that such large minority groups as Mexican Americans and Puerto Ricans are part of the Caucasian race, and that discrimination against them is based on national origin instead of race. It would appear, therefore, that the IRS position does not prohibit discrimination against these groups. Even if it is contended that the term "race" is used broadly to cover Spanish speaking pupils, the content of field examinations, discussed *supra*, suggests that ethnic discrimination does not get the attention it deserves.

III. CIVIL RIGHTS MECHANISMS

A. Complaint Investigation

Since October 1971, IRS has received five complaints of discrimination against nonpublic schools, one of which was a group complaint.[9] In two cases—one being the group complaint—onsite examinations were performed, and the schools retained tax-exempt status. Two other complaints, received in June 1972, had not been scheduled for examination as of August 1972. One of these involved Free Will Baptist Bible College in Nashville, Tenn., to which HEW terminated all assistance in April of 1967 but which continues to enjoy IRS recognition as a tax-exempt organization.[10]

The one investigation report furnished by IRS to the Commission concluded that the school is complying with the Service's nondiscriminatory policy. This conclusion was based on a reviewer's findings that admission standards had been applied equally. Yet IRS found that out of a 1971 enrollment of 250, all the students were "Caucasian except one South American, racial origin not known."[11] Significantly, the school is in a city with a black population exceeding 31 percent.[12]

Complaints about four private academies presently under investigation by IRS field personnel had been forwarded to the personnel at least 10 months earlier. Such a delay in resolving complaints, much less in completing investigations, is unwarranted. Further, in a case where a civil suit was filed five months ago against the Secretary of the Treasury for nonenforcement of IRS policy concerning private schools, IRS has not initiated a field investigation[13] or even requested HEW to evaluate the situation. Certainly a civil suit raises serious doubts about continuing to allow the school involved to have a tax exemption.

News reports of civil suits against other schools have appeared in the *New York Times*; the *Washington Post*; *Inequality in Education*, published by the Harvard Center for Law and Education; and the *Civil Rights Digest*, published by this Commission. These reports should have prompted investigations of the alleged discrimination. Additionally, beginning in 1970 correspondence was exchanged and conferences were conducted between attorneys representing the *Auzenne* plaintiffs and national office representatives of the Exempt Organizations Branch of IRS on parochial schools in the Lafayette Diocese,[14] but no investigation of the charges has been undertaken.

B. Compliance Reviews

During Fiscal Year 1972, instructions were issued requiring IRS field offices to examine a specified number of nonprofit private schools annually, regardless of whether there were complaints about the schools. These instructions required the immediate examination of at least 10 schools in 16 key districts and resulted in the examination of 205 schools. Clearly, there should be an effort greater than a random audit of 205 schools out of a total of more than 16,000.[15]

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[7] As is discussed in Section III, IRS has instructed its field staff to examine a specific number of schools, regardless of whether complaints were filed.

[8] IRS also indicates that a school must further demonstrate a nondiscriminatory policy in treatment of students.

[9] The complaint involved 12 schools. Only three were investigated, however, because the Service had no record that the other nine had been issued a letter recognizing them as exempt. This raises the question, yet unanswered, of whether a non-exempt school against which a complaint is lodged will be subjected to an onsite examination at the time tax exemption is requested.

[10] The remaining complaint is dated May 1971 but was not made available to the IRS field staff responsible for investigating it until March 1972. In any event, the onsite investigation was not begun until July 19, 1972. As of Aug. 15, 1972, the complaint was still being investigated.

[11] The IRS response reported that "The student is dark skinned."

[12] As indicated previously, IRS views schools with "meaningful" numbers of minority students enrolled as evidence of a racially nondiscriminatory admissions policy. The findings of this investigation suggest that the converse—that the absence of meaningful numbers is *prima facie* evidence of discrimination—does not hold.

[13] The IRS response to the Commission does not list the case of *Greenhouse v. Connally*, Civil Action N17741 (U.S.D.C.W.D. La., Alexandria Division) among its list of complaints received. IRS does acknowledge the case as being among those in which it is a defendant.

[14] *Auzenne v. School Board of the Roman Catholic Diocese of Lafayette, Louisiana* (U.S.D.C.W.D. La., Opelousas Division).

The Department of the Treasury has not issued detailed instructions to the field staff on conducting the reviews. The superficiality of the reviews provided by IRS reflects the absence of such guidelines.[16]

In a review performed in Albuquerque, N. Mex., for example, the reviewer found that the school did not discriminate in its enrollment policies. No statistical data were supplied, however, to document this assertion.

Another review revealed that only 11, or about 1 percent of the school's enrollment of more than 1,000, were black in a city where blacks constituted about 9 percent of the 1970 population. Similarly, only one of the 80 faculty members (13 of whom were part-time) was a minority individual. Aside from a discussion of scholarships, the review does not consider whether there is any inschool discrimination relating, for example, to classroom assignments or housing accommodations. Furthermore, the review notes that although the school has no completely objective admission standards, aptitude and achievement test scores are important. The review points out that minority students generally scored below the level the school had established as acceptable. This raises the question of whether testing policies are inherently discriminatory—a matter obviously not scrutinized by IRS officials.

C. Suspension of Advance Assurance of Deductibility of Contributions

During Fiscal Year 1972, IRS suspended assurances of deductibility of contributions held by 53 private schools that were exempt under individual rulings. It did not, however, take such action against any subordinate school coming within the scope of a group ruling.[17] During the same period, the national office concurred in the field office's proposed revocations of 26 schools which previously had exempt status under individual rulings.

Advance assurance of deductibility of contributions may be suspended even before completion of an examination when available facts and evidence clearly indicate serious doubts about the school's continued qualification. There are instances, however, in which available evidence has indicated noncompliance and adverse action has not been taken. For example, after completion of Title VI administrative proceedings on April 26, 1967, Free Will Baptist Bible College of Nashville, Tenn., was declared by the Secretary of HEW to be ineligible for HEW assistance. IRS has been reminded constantly of this HEW ruling, but it has taken no action against the college.[18]

IV. PROBLEM AREAS

A. Group Rulings for Parochial Schools

IRS procedure for granting a group ruling for parochial schools is not a reasonable means of implementing IRS policy on racial discrimination in tax-exempt institutions. The procedure assumes open and full disclosure by a national organization with regard to a subordinate unit. IRS recently sent a questionnaire to organizations with group rulings that might have, as subsidiary units, private nonprofit schools. Until responses are evaluated, IRS will not be able to identify schools covered by group rulings.

In the past there have been instances in which a national organization has failed to inform IRS that a civil suit alleging racial discrimination had been filed against one of its subordinate units, and that similar complaints had been made against another of its subordinate units. No action has been taken against the parent group, and no overall review of the subordinate units has been scheduled.

B. Coordination with HEW

IRS reports that it relies on its own procedures but "is not averse to seeking assistance or additional information from other Federal sources should the need arise." Such a position is hardly adequate. IRS should be actively seeking assistance and cooperation from agencies with expertise in civil rights and education. Its failure to reach out for help can only be interpreted as a purposeful attempt to avoid enforcing the full extent of the law. Lack of communication with

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[15] The National Center for Educational Statistics of the Office of Education estimates that there are more than 16,500 nonpublic schools in the United States. Although IRS indicates that the sample consists of those schools "identified in the private nonprofit schools survey," it is unclear what priorities, if any, were used.

[16] For a contrast see the *Manual for Conducting Equal Educational Services Compliance Reviews* and *Instructions for Conducting Higher Education Compliance Reviews and Writing Compliance Review Reports*, both prepared by the Office for Civil Rights (OCR) of HEW.

[17] A group ruling is one in which an "umbrella" organization is accorded tax-exempt status and the subordinate units within the organization are automatically given the same recognition.

[18] The results of this 1967 administrative proceeding have reappeared regularly in the HEW publication "*Status of Title VI Compliance—Interagency Report*" Further, on July 24, 1970 (after IRS had announced its civil rights policy), the Director of HEW's Office for Civil Rights, J. Stanley Pottinger, wrote to the Commissioner of Internal Revenue about the Free Will Baptist Bible College and related matters, including the establishment of a cooperative investigative procedure on such nonpublic schools. In May 1972 an onsite compliance review was conducted jointly by the OCR staff of HEW and Veterans Administration personnel. The review confirmed the previous noncompliance determination regarding the college. Although IRS staff reconsidered the college's status in light of the new information provided by HEW, it still found no violations of IRS policy. HEW requested IRS to provide copies of reports and supplemental information that led the agency to conclude that the college has a nondiscriminatory admissions policy.

HEW's civil rights staff has deprived IRS of valuable information about probable noncompliance. It has left untapped HEW's broad experience in uncovering discrimination—especially that of a more subtle nature, such as biased testing.[19]

Finally, duplication of surveys by HEW and IRS could be avoided through coordination. Collaboration on one survey could benefit both agencies by saving time. It also would benefit IRS by providing more complete information, HEW by making the response mandatory,[20] and the schools by reducing the annoyance of overlapping surveys.

V. Civil Rights Structure

No special IRS unit has been set up to handle cases involving nonprofit schools. The field enforcement program is under the Office of the Assistant Commissioner (Compliance) and operates through 16 key district offices. However, the Office of the Assistant Commissioner (Technical) has jurisdiction over substantive questions relating to the program. To enforce the major civil rights responsibilities of the Department of the Treasury, the agency should assign a senior official full-time responsibility for overseeing and coordinating the enforcement effort.[21]

Field and headquarters personnel devoted 20,662 man-hours to surveying admission policies of private schools, conducting selected field examinations, processing applications for recognition of exemption, and carrying out related work. It is unclear how many of these man-hours were expended solely on the administration of IRS's civil rights policy.

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[19] Besides the notorious Free Will Baptist Bible College situation, an HEW review in 1971 of the Lafayette, La., Diocese schools resulted in a finding of noncompliance. This report is before the Director of HEW's Office for Civil Rights for final determination. Since 1966, HEW has completed 241 reviews of nonpublic schools (other than the two mentioned above), and 37 were found in noncompliance

[20] The HEW Survey of Nonpublic Elementary and Secondary Education of 1970-71 was not completed by the original contractor because of the firm resistance of many of the schools in the Southern States.

[21] This need was demonstrated to this Commission when it sought to conduct a followup interview upon receipt of IRS's response to our questions. No official could be found who had total knowledge of IRS's efforts.

DEPARTMENT OF JUSTICE (DOJ)
TITLE VI SECTION—CIVIL RIGHTS DIVISION

I. OVERVIEW

DOJ's Title VI Section recently has made substantial contributions to upgrading Title VI enforcement efforts of other agencies. These efforts have not, however, been sufficiently comprehensive. This results primarily from the Department's restrictive interpretation of its Title VI coordinative responsibilities. It results also from lack of staff to deal effectively with agency program deficiencies that have persisted for years.

The fragmented nature of the Section's efforts has resulted in anomalous situations. One Title VI agency terminated assistance to a recipient in 1967, but another agency continued to fund the same recipient as late as 1972.

More than a year after they were formally proposed, and more than five years after the need for them was clearly recognized by an interagency task force, the Department has not approved amendments to agencies' Title VI regulations that would make the regulations more comprehensive.

II. COORDINATIVE RESPONSIBILITIES

The Title VI Section of the Department of Justice's Civil Rights Division is responsible for coordinating Title VI enforcement throughout the Government.[1] Title VI Section attorneys maintain contact, primarily, with personnel in nine agencies: Agriculture, Commerce (the Economic Development Administration), Housing and Urban Development, Labor, Law Enforcement Assistance Administration, Transportation (the Federal Highway Administration), Veterans Administration, Environmental Protection Agency, and Health, Education, and Welfare. This is essentially the arrangement that was operating when this Commission published its previous report.[2]

The Title VI staff provides considerable guidance to agencies. For example, Title VI Section attorneys continued to be instrumental in assisting agencies in formulating plans for improving the collection and use of racial data.[3] Agriculture officials consulted with them concerning the applicability, to other State Extension Services, of standards set by a court decision against the Alabama Cooperative Extension Service.[4] Title VI staff, in fact, assisted in preparing affirmative action requirements which were sent to all State Extension Services in February 1972.[5]

Section attorneys drafted Title VI guidelines relating to proprietary educational institutions assisted by the Veterans Administration (VA). They also advised VA personnel concerning the conduct of Title VI administrative proceedings and assisted the Environmental Protection Agency (EPA) staff in determining how Title VI applies to EPA grants.

Personnel in the Title VI Section continue to survey agency Title VI enforcement programs. For example, one staff attorney has reviewed and reported on EDA's Title VI compliance operation. Similar reviews have been made of the Title VI operations of the Health and Social Services Division of HEW's Office for Civil Rights; of HUD's program, including area and regional offices; and of Labor's inplementation of Title VI with regard to State employment services.

Although DOJ reports that "The Title VI Section has prepared analyses of Title VI implementation on the part of certain Federal agencies and has drafted several plans for implementing Title VI," neither the analyses nor the plans was made available. DOJ maintains that "these documents were intended for use by the Civil Rights Division or the agencies in question . . . [and] release of copies would not be consistent with our function."[6] Consequently, although the Department has formulated specific plans to assist agencies, the scope and quality of these plans are unknown.[7]

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[1] Executive Order 11247 (1965).

[2] As noted in this Commission's report, *The Federal Civil Rights Enforcement Effort: One Year Later* (November 1971), seven attorneys were assigned to monitor Title VI activities of five agencies (HEW, HUD, Labor, LEAA, and Transportation), while three other attorneys dealt with the Department of Agriculture, the Economic Development Administration, the Small Business Administration, and such interagency matters as collection of racial and ethnic data.

[3] Plans have been developed for consideration by officials in the following agencies: Agriculture, Appalachian Regional Commission, Commerce, HEW, HUD, Interior, Labor, LEAA, National Science Foundation, Small Business Administration, Transportation, and Veterans Administration. (A report on racial and ethnic data collection and use has been published by an interagency racial data committee. *Establishing a Federal Racial/Ethnic Data System*, a Report of the Interagency Racial Data Committee, cochaired by Margaret A. Cotter and Morton H. Sklar (former Title VI Section attorneys), September 1972. See Sept. 29, 1972, letter from Cotter and Sklar to Frank Carlucci, Associate Director, Office of Management and Budget.)

[4] *Strain* v. *Philpott*, 331 F. Supp. 836 (M.D. Ala. 1971).

[5] "Affirmative Action Plan for Meeting Nondiscriminatory Legal Standards in Employment and the Conduct of All Programs by State Cooperative Extension Services," issued Feb. 28, 1972. This plan was developed after David L. Norman, Assistant Attorney General, Civil Rights Division, Department of Justice, wrote to Frank B. Elliott, Assistant Secretary for Administration, Department of Agriculture, on Dec. 2, 1971, proposing guidelines for civil rights compliance in view of the legal standards set by the *Strain* decision.

In the Commission's *One Year Later* report, it was noted that the Title VI staff had not participated in either a Title VI compliance review or a complaint investigation in the preceding six months. The Title VI staff members did not then view this as their primary function, but they nonetheless were prepared to assist in such a capacity if requested.

Title VI staff attorneys since have participated in compliance reviews of recipients of assistance from Labor, Transportation, and the Law Enforcement Assistance Administration (LEAA). Title VI staff members declined to provide information concerning the quality of specific reviews.[8]

Departmental officials still contend that their authority under Title VI is not broad enough to require other agencies to impose administrative or judicial sanctions.[9] Executive Order 11247 consistently has been interpreted by the Department as giving it advisory powers only. Direction of agency activities is viewed by DOJ as usurpation of agency powers. This Commission has recommended that the Executive order be amended to authorize the Attorney General or his designee to direct agencies to take specific compliance and enforcement action, but this recomendation has not been acted upon.[10]

III. INVOLVEMENT IN TITLE VI PROCEEDINGS[11]

The Section's staff helped VA attorneys prepare a Title VI hearing for Bob Jones University.[12] But HEW had terminated all assistance to Bob Jones University in August 1967. This is a disturbing commentary on the Department's ability to assure a uniform Title VI approach.

Overall, the extent of the Title VI Section's involvement in administrative enforcement proceedings since October 1971 has been limited.[13] The Title VI Section has had, however, greater involvement in judicial proceedings since October 1971.

In terms of new litigation,[14] the Department of Agriculture (DOA) has referred a case involving the North Carolina Cooperative Extension Service to DOJ for litigation.[15] Another action, alleging discrimination in the operation of a county office of the Mississippi State Employment Service, was filed by private plaintiffs in January 1972.[16] As of September 1972, tentative agreement had been reached concerning some issues in the case, with the Title VI Section participating in the settlement negotiations.

Although personnel in the Title VI Section view their nonlitigative function as their major responsibility, they feel it must be complemented by participation in litigation. Under the Section's present staff authorization, however, involvement in litigation dilutes its ability to discharge Title VI coordinative responsibilities.

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[6] Attachment to letter from David L. Norman, Assistant Attorney General, Civil Rights Division, Department of Justice, to Rev. Theodore M. Hesburgh, Chairman, U.S. Commission on Civil Rights, Sept. 15, 1972, at 4. The Department's refusal to make such reports available severely limits the ability of the Commission staff to evaluate the Title VI Section. Furthermore, such a position is inconsistent with the Commission's legislative mandate, which directs Federal agencies to "cooperate fully with the Commission to the end that it may effectively carry out its functions and duties." According to DOJ officials, these surveys are only draft documents and not official Departmental positions. Even if they were final reports, however, attempts by anyone other than the agency surveyed to secure copies would be resisted on grounds that an attorney-client relationship exists, and that disclosure would have a chilling effect on the relationship between the Department's Title VI personnel and the agencies. Interview with Robert Dempsey, Acting Chief, Title VI Section, Civil Rights Division, Department of Justice, Dec. 7, 1972.

[7] The Commission also requested DOJ to provide copies of any legal opinions concerning Title VI matters written after October 1971. The DOJ response indicated that the Attorney General had not issued any such opinions but that the Department has responded to agency requests for its "views" concerning Title VI. The Department declined to provide copies, asserting again that doing so would be inconsistent with its functions.

[8] They did note generally that agency Title VI operations are uniformly understaffed, but they observed that inadequate staffing also is common to programs and is not unique to civil rights functions.

[9] *E.g.*, June 1, 1972, letter from K. William O'Connor, Deputy Assistant Attorney General, Civil Rights Division, Department of Justice, to Harold C. Fleming, Leadership Conference on Civil Rights: ". . . we have not interpreted our coordinating function to authorize direction of the actions of the other Federal agencies."

[10] The Department is considering whether the Title VI Section can be more effective with broader authority, as this Commission has urged.

[11] This report does not consider actions initiated by HEW.

[12] In October 1972, a hearing examiner found Bob Jones University in noncompliance, and the VA Administrator concurred.

[13] The only other administrative actions reported involve the Southwest Georgia Planning and Development Commission, an EDA recipient, and Eastern Baptist Bible College, a VA recipient. The former was notified of an opportunity for a Title VI hearing in July 1972, but as of September 1972 further negotiations were being conducted. In the case of Eastern Baptist Bible College, a hearing was held and an administrative finding of noncompliance was issued in April 1972. Yet, according to Department officials, this matter was still under investigation as of September 1972.

[14] Other suits in which the Title VI Section has participated are either concluded (*Strain* v. *Philpott*, *Castro* v. *Beecher*, *U.S.* v. *Hassle*, and *U.S.* v. *Williams*); pending in lower court (*Wade* v. *Mississippi Cooperative Extension Service* and *Whitfield* v. *King*, now being handled by the Civil Division); or on appeal (*Morrow* v. *Crisler*, now being handled by the Civil Employment Section of the Civil Rights Division).

[15] *Bazemore* v. *Friday*, Civ. Action No. 2879 (E.D. N.C. 1971). The suit was originally filed in November 1971 by private plaintiffs, with the Secretary of Agriculture and Associate Administrator of the Extension Service joined as defendants. While the litigation was pending, DOA conducted a compliance review, found the State Extension Service in noncompliance, and sought voluntary compliance. Unable to achieve voluntary compliance, DOA officials referred the matter to DOJ for litigation. After a review, DOJ filed a complaint in intervention, based partly on Title VI. As a result, the Federal officials were realigned as plaintiffs.

[16] *Pegues* v. *Mississippi State Employment Service*, Civil Action No. DC 72-4-S (N.D. Miss. 1972). In November 1972, the plaintiffs were ordered by the court to name the Secretary of Labor as a defendant.

IV. UNIFORM TITLE VI AMENDMENTS

In July 1967, an interagency task force determined that uniform amendments to agency Title VI regulations were needed. More than five years later, the old regulations remain in effect. The proposed uniform amendments to the Title VI regulations of 20 Federal agencies were published in the December 9, 1971, Federal Register as a proposed rule making.[17] This afforded interested parties an opportunity to comment. The Civil Rights Division, after reviewing the comments, recommended that 11 of the 20 Title VI agencies make additional changes in the proposed amendments.[18] As of August 28, 1972, seven of these 11 agencies had altered the amendments and forwarded them to the Department of Justice for submission to the President.

As of December 1972—a year after the proposed amendments appeared in the Federal Register—the amendments still have not been approved by the Attorney General.[19] Moreover, other agencies with clear Title VI responsibilities, such as the Equal Employment Opportunity Commission, still have not even proposed regulations.[20]

V. ORGANIZATION AND STAFFING

Although the Department's Title VI unit was raised to section status in 1971, its standing inside and outside the Department has been downgraded continually throughout its existence. The top position in the unit has gone from a GS-17 Special Assistant to the Attorney General in 1965 to its present status: a GS-15 Section Chief within the Civil Rights Division.[21]

During the past year, staffing in the Title VI Section has worsened. As of October 1971, there were 12 attorneys, including the Director. The Department indicated that six attorneys would be added to the staff before July 1972. But as of September 1972, there were only nine attorneys—three below the authorized level.[22]

DOJ officials believe that there must be some showing that the Section's role is meaningful before a staff increase is authorized. Specifically it must be shown, to justify staff increases, that agencies are responsive to the Department's Title VI recommendations. However, deferring staff increases until the need for expansion can be convincingly demonstrated unduly delays the Section in meeting its clear responsibility to monitor and coordinate Title VI activities on a Government-wide basis.

Unless the Section's authority to act forcefully is increased significantly—either through broader interpretation of Executive Order 11247 or amendment of it—its work will continue to be piecemeal, regardless of staff increases.

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[17] The National Foundation on the Arts and the Humanities, the Federal Home Loan Bank Board, the Civil Service Commission, and the Environmental Protection Agency also have adopted proposed Title VI regulations. They will be submitted for Presidential approval, along with the amendments of other agencies.

[18] These changes related to affirmative action; coverage of planning and advisory bodies; racial and ethnic data collection; and time for filing complaints. No changes were required of the other nine agencies (AID, AEC, CAB, GSA, NASA, NSF, State, TVA and OEP). It was felt that these agencies had relatively insignificant Title VI programs. Also, compliance responsibility for many of these programs had been delegated to HEW. According to DOJ officials, these factors, coupled with the need to expedite the approval process, obviated the need to require amendment changes by all agencies. (Dempsey interview, *supra* note 6.) These reasons are not particularly compelling, especially in view of the length of time since the need for amendments was first recognized.

[19] After the Attorney General approves them, they are submited to the President.

[20] The Appalachian Regional Commission also has not drafted Title VI regulations. There remains a need to consider the applicability of Title VI to other agencies, such as the Coastal Plains Regional Commission, the New England Regional Commission, the Ozarks Regional Commission, the Upper Great Lakes Regional Commission, the Water Resources Council, the Federal Power Commission, the Library of Congress, and the Smithsonian Institution.

[21] The Director of the Section recently transferred to the Office of Legal Counsel.

[22] By December 1972, this had decreased to eight with the departure of the Section Chief. Since October 1971, the number of research analysts has increased from two to three. It is expected that by January 1973 there will be 10 attorneys and five research analysts.

DEPARTMENT OF AGRICULTURE (DOA)

Title VI Enforcement

I. OVERVIEW

Most notable among DOA's civil rights achievements is the recent action to implement goals and timetables for minority participation in agency programs. It is still too early to assess the full impact of this measure, but it clearly represents an innovative approach to ensuring compliance with civil rights mandates—an approach that has yet to be matched by any other Title VI agency.

The compliance enforcement mechanisms of DOA's constituent services and administrations vary considerably. Overall, there is a need to improve the number and quality of both preaward and postaward reviews. In addition, procedures should be instituted to expedite the resolution of complaints.

Discrimination in the Extension Service remains a major problem on DOA's docket. In February 1972, the Extension Service issued guidelines for eliminating discrimination in the employment practices and services of State Extension Services. At first it was decided that the States would be required to develop affirmative action plans by July 1972 and implement the plans by December 1972. The Federal Extension Service's proclivity for delaying compliance again manifested itself, however, in an action which moved their deadlines back to September 1972 and February 1973, respectively. These new dates clearly will be the final test of DOA's resolve to discharge its civil rights obligations.

DOA has made substantial gains in collecting and evaluating racial and ethnic data on actual and potential beneficiaries, but there is room for refinements. The Extension Service, for example, has not completed the required first evaluation of its data. The Food and Nutrition Service uses a sampling technique that needs to be strengthened.

Recent establishment of an Office of Equal Opportunity at the Department level should help greatly in assuring that the recalcitrance of agencies such as the Extension Service does not endure. But if this Office is to be able to use the wide array of monitoring tools at its disposal, its staff must be increased significantly.

II. PROGRAM AND CIVIL RIGHTS RESPONSIBILITIES

DOA has 11 operating services and administrations with Title VI responsibilities.[1] This report will focus primarily on three programs with significant Title VI implications: Extension Service, Food and Nutrition Service, and Farmers Home Administration. The other programs will receive abbreviated treatment.

The Department also provides subtantial assistance which flows directly to the beneficiaries without going first to a grant recipient—a step necessary for Title VI coverage.[2] These direct assistance programs—such as some FHA [3] loans and ASCS commodity price supports—are not covered by Title VI. DOA has issued a regulation proscribing discrimination in any direct assistance program.[4]

Cooperative Extension Service (CES)

The Cooperative Extension Service program is conducted and financed cooperatively by DOA, State land-grant universities,[5] and county governments. Most of the funds are used to defray the salaries and expenses of the State and county extension personnel. These employees disseminate information—often through demonstrations—on such topics as agricultural production and marketing, home economics, community development, and youth development. All residents of States or counties where extension services are offered are eligible for this assistance.

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[1] Agricultural Research Service (ARS), Agricultural Stabilization and Conservation Service (ASCS), Agricultural Marketing Service (AMS), Cooperative State Research Service (CSRS), Extension Service (ES), Farmer Cooperative Service (FCS), Farmers Home Administration (FHA), Food and Nutrition Service (FNS), Forest Service (FS), Rural Electrification Administration (REA), and Soil Conservation Service (SCS).

[2] See 7 C.F.R. 15 Subpart A. Examples of programs operating through recipients—and therefore covered by Title VI—are the National School Lunch program of FNS and the educational programs of ES. In the latter instance, grants are provided to land-grant institutions which—through State and county extension services—provide educational assistance to farmers, homemakers, 4-H youth, and others. The land-grant institutions are the recipients, and the farmers, homemakers, and 4-H youth are the beneficiaries. In all, there are approximately 55 DOA programs subject to Title VI.

[3] But see Appendix to DOA's Title VI regulation and the discussion, *supra*, which identify some "direct loan" programs subject to Title VI.

[4] See 7 C.F.R. 15 Subpart B. Direct assistance programs will receive peripheral treatment herein.

[5] State land-grant colleges and universities are recipients of substantial Federal assistance. Presidents of these institutions are nominal heads of State Extension Services. This Commission has noted repeatedly that in States where there are both a predominantly white and a predominantly black land-grant campus, DOA funds for extension services and research have been inequitably allocated in favor of the white schools. As noted in a Federal ES report of 1969: "The Second Morrill Act of 1890 provided funds to support land-grant colleges for Negroes in the 17 Southern and border States. . . . The Smith-Lever Act provided that in States with more than one land-grant college, Federal funds appropriated for Cooperative Extension work be paid to the college designated by the State legislature. In all 17 States, the college . . . for white students was designated . . . (as the recipient of all Federal funds)." Progress has been made toward achieving

Providing black farmers with technical assistance inferior to that furnished white farmers is but one example of discrimination which may be practiced by Extension Service (ES) personnel.[6] Discrimination in ES programs is particularly damaging because it often means that minority beneficiaries are denied information with which they could participate more effectively in other DOA programs.[7]

Closely related to services provided by ES is the matter of equal employment opportunity within ES.[8] Regulations aimed at assuring equal employment opportunities within State Cooperative Extension Services (SCES) were issued in August 1968. By December 1968, each State ES had developed an equal employment opportunity (EEO) program and submitted it to DOA for approval. EEO programs adopted in 1968 were returned to State Extension Services for review and revision in January 1971.[9]

To assist State Extension Services in developing a more affirmative EEO program, DOA officials prepared a model program. The model was not provided to the States, however, until more than a year after the plans were returned to them for revision.[10]

The model actually was dictated by the 1971 *Strain v. Philpott* decision, which found pervasive racial discrimination in the Alabama Extension Service's employment practices and distribution of services.[11]

Food and Nutrition Service (FNS)

FNS administers several programs[12] designed primarily to improve the diets of school children and others. FNS recipients range from State agencies to public and nonprofit private schools drawing students from poverty areas.[13] Racial and ethnic statistics collected on the FNS Food Stamp and Food Distribution programs revealed high rates of minority participation.[14]

Forms of discrimination that may occur in FNS programs relate primarily to enrollment policies and program administration. For example, a State agency distributing food stamps and applying more stringent eligibility criteria to minority than to nonminority individuals would be openly violating Title VI.

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parity, but a significant disparity in funding persists. This is largely because the Department has never recommended that the legislation permitting discriminatory allocation of funds be revised. See *Civil Rights Digest*, U.S. Commission on Civil Rights, September 197[illegible], at 12; see also letter from Rev. Theodore M. Hesburgh, Chairman, U.S. Commission on Civil Rights, to Earl L. Butz, Secretary of Agriculture, Jan. 4, 1972.

[6] A variation is segregated services, such as segregated 4-H clubs.

[7] The magnitude of the ES program is illustrated by the fact that ES personnel "reached about two and a half million individuals in more than 600,000 families with information, counseling, and demonstrations to help improve their diets . . . (and more than four million) youth were served through 4-H youth development programs." OMB's 1972 Catalog of Federal Domestic Assistance, Sec. 10.500.

[8] A related problem is the failure of State employees to work across racial lines resulting in inferior service to specific racial or ethnic groups.

[9] Changes in the EEO programs were necessitated in part, if not entirely, by widespread discrimination uncovered in both the employment practices and services of State Extension Services subsequent to implementation of the EEO programs. Findings of pervasive discrimination were disclosed by DOA's Office of the Inspector General (OIG), which had conducted civil rights audits of State Extension Services in 1969. The findings were similar to ones previously made by OIG in 1965 and 1967. Furthermore, employment discrimination appears to persist as a legacy of the era, before enactment of the Civil Rights Act of 1964, when 15 State Cooperative Extension Services maintained dual systems.

Comparing the percentage of Negroes in these State populations (using 1970 census data) to the percentage of Negroes employed as State and county Extension professionals (using November 1971 statistics) provided a gross measurement of the States' compliance with the EEO regulation. In virtually every case the disparity is quite significant: Alabama, 26.2 percent v. 16.1 percent; Arkansas, 18.3 percent v. 8.6 percent; Florida, 15.3 percent v. 4.8 percent; Georgia, 25.9 percent v. 8.7 percent; Kentucky, 7.2 percent v. 1.9 percent; Louisiana, 29.8 percent v. 10.6 percent; Maryland, 17.8 percent v. 6.6 percent; Mississippi, 36.8 percent v. 14.4 percent; Missouri, 10.3 percent v. 3.0 percent; North Carolina, 22.2 percent v. 14.3 percent; Oklahoma, 6.7 percent v. 1.7 percent; South Carolina, 30.5 percent v. 19.8 percent; Tennessee, 15.8 percent v. 5.5 percent; Texas, 12.5 percent v. 9.7 percent; and Virginia, 18.5 percent v. 13.1 percent.

There is little doubt that these disparities are partly attributable to the pre-1964 dual systems. The disparities have persisted despite an affirmative action requirement in the EEO regulation ostensibly aimed at overcoming the effects of past discrimination. The statistics do not differentiate between occupational categories. Such an analysis likely would show blacks disproportionately occupying the lower positions. See testimony of an OIG official at *Hearings on Agriculture-Environmental and Consumer Protection Appropriations for 1973 Before Subcommittee of the House Committee on Appropriations*, 92d Cong., 2d sess., Part 5 at 966 (1972). See also 1973 Budget Hearings, Part 2 at 339, where it is noted that minorities make up, nationwide, approximately 9 percent of the more than 11,000 county and area extension agents; less than 2 percent of the more than 4,300 State and area specialists; and slightly more than 2 percent of the more than 1,000 administrative and supervisory personnel.

[10] "Affirmative Action Plan for Meeting Nondiscriminatory Legal Standards in Employment and the Conduct of All Programs by State Cooperative Extension Services," issued Feb. 28, 1972. The scope and adequacy of this model plan are examined in Section IV, *infra*.

[11] 331 F. Supp. 836 (M.D. Ala. 1971). The Department of Justice had intervened on the side of the plaintiffs against the State ES. Although ES officials expressed a willingness to apply the legal requirements of the *Strain* decision to all States, they first requested that the Department of Justice set forth specifically what legal standards had to be met. This request seemingly was motivated less by a need for clarification than by a conscious attempt to shift the "blame" for imposing the administrative requirements for ES to DOJ. See letter from David L. Norman, Assistant Attorney General, Civil Rights Division, Department of Justice, to Frank B. Elliott, Assistant Secretary for Administration, Department of Agriculture, Dec. 2, 1971, proposing guidelines for compliance with *Strain* standards.

[12] These include the Food Donation, Food Stamp, Nonschool Food, School Breakfast, School Lunch, and School Milk programs.

[13] Some programs also provide assistance to such nonprofit child-care institutions as nursery schools, child-care centers, settlement houses, and summer camps.

[14] In 10 States with a black population equalling or exceeding 16 percent of the total 1970 State population, black participation in food programs was at least double the proportion of blacks in the 1970 State population in every instance. The pattern was virtually the same for American Indians in those States with American Indian populations of 0.5 percent or more. Statistics were reported as of October 1971. These data will be examined in Section III A. It should be noted, however, that these are statewide rates which could obscure local problem areas.

Farmers Home Administration (FHA)

FHA administers both direct-assistance and Title VI programs. In the category of direct assistance, FHA provides direct loans, or may guarantee or insure loans from financial institutions, to rural residents who otherwise would be unable to obtain credit on reasonable terms.[15] Assistance subject to Title VI comes in many forms,[16] but each grant program is for the ultimate benefit of farmers or rural residents.

Discrimination may occur in a variety of forms. Associations of farmers receiving loans for constructing low-rent housing or for acquiring and developing grazing land may have exclusionary membership policies;[17] public bodies receiving planning grants may develop plans which would benefit only majority group residents; and nonprofit corporations receiving loans to construct outdoor recreational facilities may operate segregated facilities.

According to DOA, minimum enforcement activity will be directed in the future to these FHA programs subject to Title VI: planning advances for water and waste disposal; watershed loans and advances; water and sewer planning grants; irrigation and drainage loans; and loans for unincorporated associations. There seems to be some validity to FHA's perception of the limited Title VI coverage of these programs.[18] There is some question, however, whether DOA has fully understood the civil rights impact of some of the programs slated for only minimal Title VI enforcement activities. For example, DOA reports that the water and sewer planning grants are made for long-range planning on an areawide rather than limited-area basis. Nevertheless, the plan, if implemented, would establish how water and sewer benefits actually would be distributed. The plan should be carefully reviewed, therefore to determine whether it is inherently discriminatory.[19]

Other Constituent Services and Administrations [20]

1. The *Agricultural Research Service* (ARS) administers a research program in which grants are provided to nonprofit institutions of higher education or nonprofit organization.[21] ARS also disseminates technical information to anyone requesting it. Discrimination may occur in the allocation of funds between predominantly minority and predominantly white colleges.

2. *The Agricultural Stabilization and Conservation Service (ASCS)* administers "commodity and related land-use programs designed for voluntary production adjustment; resource protection; and price, market, and income stabilization." Loans or grants occasionally are made to associated groups.[22]

More often than not, ASCS programs involve direct payments to farmers. DOA reports that even the "price support programs operating through producer associations, the crop land adjustment programs and the price support programs operating through cooperative marketing associations required only minimal Title VI enforcement action."[23] This is supposedly because little decisionmaking about program operation is necessary at the county level. ASCS programs are administered through State, county, and community committees.[24] State members are appointed by the Secretary of Agriculture; community members are elected by farmers eligible to participate in ASCS programs; and county committee members are elected by the chairmen of community committees. The major decisionmaking power in ASCS rests with *indirectly* elected three-member county committees.

The racial and ethnic composition of the county committees is of considerable significance, since the committees "are responsible for the local administration of ASCS . . . activities requiring direct dealings with farmers."[23] In 1970, community committee chairmen[26] *elected* 1,671 county committeemen. Of this number, two, or less than 1 percent, were black; eight, or less than 1 percent, American Indian; 41 or about 2 percent Spanish surnamed; and none was Asian American. There were 9,183 county committee members serving in 1970. Ninety-four, or about 1 percent, were minority individuals.[27]

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[15] Loans obligated to individuals fall into these categories: farm operating, farm ownership, soil and water, rural housing, economic opportunity, and emergency.

[16] For example, public bodies may receive water and sewer planning grants; political subdivisions and associations of farmers may receive loans or grants for low-rent housing for domestic farm laborers; and public agencies and nonprofit corporations in designated Resource Conservation and Development Areas may receive loans for construction or improvement of recreational facilities.

[17] In September 1971, the Department of Justice issued an opinion extending application of Title VI to approximately 1,890 recreation association borrowers which had received loans between January 1965 and May 1968. Loans subsequent to May 1968 previously had been determined to be subject to Title VI. In transmitting this opinion to FHA State and county personnel, the FHA Administrator stated that recreation association borrowers should remove any restrictive membership clauses from their bylaws. The FHA transmittal added that DOA's Office of the General Counsel had decided that Title VI applied to farm ownership and operating loans *for nonfarm enterprises*, including those for purposes other than recreation. Direct loans of this type ordinarily would not be subject to Title VI, but they have been covered in this instance because of the benefits that inure to others. See FHA Bulletin No. 4168 (400), Dec. 20, 1971, and letter from E. M. Shulman, DOA General Counsel, to D. L. Norman, Assistant Attorney General, Civil Rights Division, DOJ, Feb. 17, 1972.

[18] For example, loans and advances for watershed projects are made only to municipal corporations after the requisite planning has been done by the Soil Conservation Service and each project has been approved by Congress. Thus, FHA's Title VI responsibilities appear limited. Nonetheless, some review should be made to ensure that every resident or property owner within the protection area actually receives the benefits.

[19] The plan must be limited to a rural area and may not include towns with populations exceeding 5,500. A civil rights review should be performed to determine whether eligible localities are excluded or would receive disparate services coinciding with racial concentrations. Failure to consider the plan from this perspective ignores the fact that potential services become actual benefits when the plan is implemented.

[20] The Agricultural Marketing Service (AMS) is listed as having responsibility for the Federal-State Marketing Improvement Program. Although that program has Title VI implications, it is not considered in this report.

[21] After public announcement, research results are available to the public on *request*. There is some question about how the potential beneficiaries are apprised of the availability of the information. Such notification conceivably should be a function of the Extension Service.

[22] For example, associated groups may receive grants through the Rural Environmental Assistance program (REAP) to encourage them to put pollution abatement or conservation practices into effect.

3. *Consumer and Marketing Service*(CMS) [28] programs have few Title VI implications. Meat and poultry are inspected at plants processing these products for interstate commerce. Recipients of these services are subject to Title VI, but there is little chance for discrimination.[29] CMS also gives financial assistance to States wishing to improve their intrastate meat and poultry inspections. A State might discriminate by applying more stringent standards to minority processors than majority processors.

4. The *Cooperative State Research Service (CSRS)* typically makes grants for agriculture research to State Agricultural Experiment Stations, Forestry schools, and land-grant colleges. The opportunity to discriminate lies mainly in allocation of grants between predominantly black and predominantly white colleges.

5. The *Farmer Cooperative Service (FCS)* provides technical assistance and research and development services to farmer cooperative associations. An association's refusal to accept a member on the basis of race or national origin would be an example of a Title VI violation.

6. The *Forest Service (FS)* administers a variety of direct assistance and Title VI programs. In terms of Title VI, FS generally provides assistance through State forestry agencies and soil and water conservation districts for protecting, managing, and developing State, local, and private forest lands. Grants relate to such matters as forest fire prevention, timber growing and harvesting, rural development, and watershed protection. Using the assistance to States to promote developments which would exclude minorities is an example of the discrimination possible in this program.[30]

7. The *Rural Electrification Administration (REA)* administers direct loans to rural electric cooperatives or similar associations and to telephone companies and telephone cooperatives. If residents of areas served by REA recipients are excluded on the basis of race or national origin, Title VI has been violated.

8. The *Soil Conservation Service (SCS)* directs a program through which technical assistance relating to soil and water conservation is provided, principally to more than 3,000 locally organized and operated conservation districts. Individuals and groups usually become cooperators with those districts to which application for assistance is directed. Discrimination might occur in the form of denying membership to a farmer because of race or ethnicity. Statistics collected in 16 States where blacks constitute an "important proportion" [31] of *potential* cooperators revealed that in 1971 less than 5 percent of the cooperators were black. While the number of white cooperators represented 55 percent of whites eligible to participate, the number of black cooperators represented only 34 percent of the blacks eligible.[32]

III. COMPLIANCE MECHANISM

A. Compliance Report System

DOA recognizes the importance of a comprehensive system for collecting racial and ethnic data to assure equal access to the benefits of DOA programs. The Secretary has directed each constituent administration or service to enumerate eligible participants; to establish a system for collecting and reporting racial data on participation; to review programs periodically to ascertain the extent of minority group participation, as measured against equal opportunity objectives and measurable targets; and to report annually on progress in meeting identified objectives.[33]

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[23] Title VI does cover price support programs in which the recipient is required to furnish specified benefits to producers. But DOA reported that "most of the factors used to determine program participation are outside the powers of the CED (county executive director) and county committeemen."

[24] 1971 Office of Equal Opportunity Annual Report, at 15.

[25] *U.S. Government Organisation Manual*, 1970/1971, at 272.

[26] In 25 States where ASCS programs operate, 10,364 community committeemen were *elected* in 1970. Of this number, 348, or about 3 percent, were minority group members. There were more than 71,000 community committee members *serving* in 1970, of whom 366, or less than 1 percent, were minorities.

[27] The pattern among ASCS county employees in 1970 was only slightly better. Of the 2,829 ASCS county employees, 408 or 10.8 percent were minority individuals. While 28 percent of the whites were in the upper-grade levels, less than 1 percent of the minorities were.

[28] CMS is not listed separately by DOA as having Title VI responsibilities.

[29] Inspection is required. A plant conceivably could discriminate by refusing to sell its products to minorities.

[30] The number of projects, communities, and groups receiving rural development assistance has been placed at 6,300. If the assistance went first to a State agency which only assisted predominantly white communities and neglected minority communities, this would violate Title VI.

[31] The term "important proportion" is not defined.

[32] Another sample analyzed cooperator membership in seven States where Spanish surnamed persons constituted an "important proportion" of the potential cooperators. It showed that only slightly more than 3 percent of the actual cooperators are Spanish surnamed individuals. Unlike the other example, however, the actual number of Spanish surnamed cooperators represented 36 percent of the potential Spanish surnamed beneficiaries, while the white cooperators represented 52 percent. See 1971 OEO Annual Report, *supra* note 24 at 71 ff.

[33] Secretary's Memorandum No. 1662, Supplement 1, July 27, 1970. This Supplement further indicated that: measures of target population may be derived from standard statistical sources; data collected should be based on reviewable records and identify participants in six categories—white, black, American Indian, Spanish surnamed, Asian American, and other; and the system should be designed to obtain racial data for all counties in which the program operates. See also Secretary's Memorandum No. 1662, Sept. 23, 1969.

The program Evaluation Division of DOA's Office of Equal Opportunity assisted the constituent agencies in developing the reporting systems. Agencies were directed to perform annual evaluations so as to force them to look at their own programs.[34] (One agency, FHA, had been collecting data for several years but had done nothing to measure the civil rights impact of its programs.) Agencies submit the basic eligibility and participation data and their evaluations to the Program Evaluation staff. The Program Evaluation Division reviews the data and the analyses, calling discrepancies to the agencies' attention.[35]

Extension Service (ES)

ES previously resisted collecting racial and ethnic data. It was some time, consequently, before the State Extension Management Information System (SEMIS) was established.[36] ES since has been reporting raw data on employment and beneficiaries in major areas (home economics, 4–H youth development, and community development), but ES officials have not evaluated the data.[37]

ES uses racial data as "a criterion to assess the extent to which programs are in balance in relation to the racial-ethnic composition of potential and present clientele."[38] Analysis of the data reportedly has resulted in numerous program changes.[39] It is expected that the national evaluation, when completed, will assess the general ability of ES programs to reach, serve, and meet the needs of various racial and ethnic groups; will measure the quality and quantity of services provided; and will identify program adjustments or new programs needed to reach minorities not participating.[40]

The kind of data collected through SEMIS can be seen in DOA's 1971 OEO Annual Report. In one part of the report, the number and percent of contracts[41] by ES staff are given for ES-sponsored educational programs. Eligibility data, however, are not given, although they presumably are available and will be used by ES in its evaluation.[42]

Food and Nutrition Service (FNS)

FNS administers programs in three basic areas: child nutrition, food distribution, and food stamps. For the Child Nutrition programs, FNS has requested DOA's Statistical Reporting Service to perform a statistical survey, using a sampling technique which includes collection of racial and ethnic data from the National School Lunch program. This is the first time this has been done,[43] and the project is reportedly nearing completion.

FNS has had a semiannual reporting requirement for both the Commodity Distribution and Food Stamp programs. Data reported in February 1971 were inaccurate. In October 1971, 80 percent of the States reported, but they did not supply eligibility data. FNS had to wait until the February 1972 reports were submitted to have a basis for comparison.

In the future, FNS will institute a quality control system modeled after that of the Department of Health, Education, and Welfare (HEW). FNS has been informed that 60 percent of its participants are recipients of public assistance. Until now HEW has been monitoring the participation of public assistance recipients in DOA food programs and has provided DOA with participation data based on a *sampling* of participants. For the 40 percent of DOA food program participants who are not public assistance recipients, DOA has adopted a sampling system almost identical to HEW's. This approach is in operation in 36 States and will be used in all States within the next year.

DOA's quality control system has several weaknesses. First, it is essential that sampling be scientific.[44] But not even a scientific sample will ensure identification of problems at the county level. This is so partly because the data will be aggregated on a statewide basis. Thus, poor minority participation in some counties may be obscured by data from counties with abnormally high participation.[45] Also, the information provided by HEW on 60 percent of the DOA participants is limited because HEW's racial breakdown covers only four categories: white, nonwhite, other, and unknown.[46]

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[34] Reports on both direct assistance and Title VI programs were evaluated for six agencies in 1971 and for nine in 1972.

[35] The Chief of the Program Evaluation Division reports the findings to the Director of DOA's Office of Equal Opportunity (OEO) and sends a copy to the agencies for comment. The OEO Director shows the reports to the Secretary at his/her discretion.

[36] Prior to establishment of SEMIS, ES collected information on an *ad hoc* basis. According to DOA officials, these data became dated quickly. Yet officials should have been able to make more effective use of the data—for example, to ascertain the extent of segregation in 4-H clubs.

[37] Such an evaluation is reportedly now being prepared.

[38] Attachment to DOA memorandum from E. L. Kirby, ES Administrator, to Jerome Shuman, Director of the Office of Equal Opportunity, July 20, 1972.

[39] *Id.* For example, new agricultural programs aimed at low-income and low-resource farmers have been developed; home economics publications have been printed in Spanish; and use of program aides has been expanded to extend ES educational opportunities to more low-income and minority youths.

[40] *Id.*

[41] A contact is defined as "a face-to-face contact between the Extension Staff member and a member of an audience in carrying out an Extension Education Program." In the OEO Annual Report, duplication of contacts is removed in some cases and is not in others.

[42] The OEO Annual Report shows, for example, that in 14 Southern States, 12 percent of contacts in Fiscal Year 1971 were with blacks. A breakout is provided by State, except for Alabama and Mississippi, where data are not reported through SEMIS.

[43] This is also the last time data will be collected in this fashion. Participation data in the National School Lunch program will be collected in the future by means of compliance reviews of one-third of the schools in each State. It is uncertain what surveys will be made of the other Child Nutrition programs, such as the School Breakfast program.

FNS programs splendidly illustrate the need for eligibility data. For example, in the 10 States with black populations of 16 or more percent of the 1970 total, the percentage of blacks participating in the Food Stamp and Food Distribution programs far exceeded the percentage of blacks in the State population. But unless participation data are compared to potential beneficiaries, the statistics are somewhat meaningless.[47]

Farmers Home Administration (FHA)

In the judgment of DOA's Program Evaluation staff, FHA makes the best use of eligibility data of any agency in the Department. FHA has been collecting racial and ethnic data on its six individual loan programs for more than five years. It collects similar information on loans made to associations.

This year each FHA division evaluated its own loan program, and the Program Evaluation staff was generally satisfied.[48] It appears, however, that the data, although collected by each of the 1,700 FHA county offices, are aggregated on a statewide basis.[49]

Other Agencies

For DOA's other constituent services and administrations the quality of racial and ethnic data collected for both direct assistance and Title VI programs varies considerably.

B. Goals and Timetables

Of DOA's recent efforts to upgrade its enforcement mechanism, the most significant relates to goals and timetables. In May 1972, the Secretary directed all agencies to establish, beginning in Fiscal Year 1973, a system for targeting delivery of program benefits to prospective minority participants.[50] The directive requires each agency to define parity participation; to set annual goals to improve minority participation; to collect participation data; and to monitor progress.

In June 1972, the Director of DOA's Office of Equal Opportunity issued instructions for implementing the Secretary's directive.[51] This provides DOA's constituent agencies with a general format for setting participation targets, but it is the agencies' responsibility to set the targets. Representatives of the OEO and the agencies met June 15 to discuss procedural details. July 15, 1972, was set as the deadline for agencies to identify programs susceptible to targeting.[52]

Defining parity participation is complicated. As the general guidelines note, "The nature of each program will dictate how targets can be set."[53] Furthermore, DOA officials view parity participation as a long-range goal. They assert that they cannot expect all agencies to achieve this level in a short time.[54]

It is hoped that agency performance in meeting targets will be reviewed ultimately in the budget process. That is to say, an agency's success in meeting targets will affect the funding that will be requested for the agency in the following fiscal year.

DOA is to be commended, but it is too early to judge whether the new system will prove effective. Much will depend on the monitoring performed by the Office of Equal Opportunity, which will have the responsibility of assessing the reasonableness of the definitions of parity participation and the participation targets.[55]

C. Preapproval Reviews

Only two of DOA's constituent agencies—FHA and REA—conducted preapproval reviews of Title VI recipients during Fiscal Year 1972. FHA conducted 242 such reviews and REA, 732.[56] Only one prospective recipient was barred, that by FHA.

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[44] The alternative of a head count as a means of collecting racial and ethnic data is not feasible because the applicants are not actually seen under the new FNS self-certification program.

[45] Furthermore, it is not clear that all counties will be sampled. Consequently, even if the data reflect low minority participation statewide, it will be impossible to pinpoint the deficient counties without substantial followup.

[46] DOA, on the other hand, uses six categories: white, Negro, Spanish surname, Asian American, American Indian, and other.

[47] See DOA's 1971 OEO Annual Report, *supra* note 24, at 59ff. Eligibility data apparently were not available at the time of this publication.

[48] In a May 1972 draft report prepared in the Program Evaluation Division, FHA's direct-assistance Rural Housing Loan program was evaluated. The report noted that the absence of FHA eligibility data, based on qualification and need, is certain to lead to inaccurate conclusions.

[49] As has been repeatedly pointed out, this may obscure, in a county office, discriminatory practices which would only be disclosed in a compliance review.

[50] Secretary's Memorandum No. 1662, Supplement 5, May 18, 1972.

[51] Memorandum from Jerome Shuman, Director, OEO, to all DOA agency heads, June 5, 1972.

[52] Aug. 15, 1972, was set as the date when participation goals for Fiscal Year 1973 were due, but the deadline was flexible.

[53] Several examples are provided. For programs with several years of data on participation by minorities, targets might be a percentage increase over past performance, of a percentage of the gap between participants and eligibles. For programs not readily quantifiable, targets might be specification of improved quality of services. For programs with no data available, the initial targets might be development of a suitable reporting system. Shuman memorandum, *supra* note 51.

Agencies have been requested to list only those programs in which they can quantify targets. For example, ASCS will not be expected to identify what percentage of its direct-assistance subsidy programs will be going to minorities. These programs do not lend themselves to measurable targeting because the level of subsidies is dependent on market conditions. The target in this instance likely will be that minority farmers participate at a rate similar to that of white farmers.

[54] Agencies have not been asked to delineate compensatory measures that may have to be instituted to achieve parity, but the Program Evaluation Division will be scrutinizing the methodology for setting targets (i.e., means of delivery).

[55] Extension Service already has set goals and timetables for minority participation in all ES programs as part of the affirmative action plans of all State Extension Services. (See discussions *supra* and *infra*.)

[56] FHA and REA had respectively, 8,246 and 1,738 recipients, subject to Title VI in Fiscal Year 1972. It is unclear how many of those recipients were newly funded in Fiscal Year 1972. The percentage subject to preapproval reviews is, therefore, unknown.

D. Postaward Reviews and Monitoring of Field Activities

Most onsite, postaward compliance reviews are conducted by agency program staff and cooperating State personnel. A considerable amount of monitoring is performed, however, by other DOA units, such as the Office of Equal Opportunity and Office of the Inspector General. Because of the link between these activities, they will be discussed together in this section.

Extension Service (ES)

ES has 52 Title VI recipients. There are many more subrecipients—namely, the State and county extension offices. In Fiscal Year 1972, 2,495 Title VI reviews of subrecipients were performed. For the most part, the reviews were performed by the recipient State Extension Services. As usual, none of the subgrantees was found in noncompliance.

In a prior Commission report, it was noted that compliance reviews performed by State Extension personnel were not reviewed by Federal personnel, raising numerous questions about the quality of the reviews. This situation continues.[57] Staff in the Compliance and Enforcement (C&E) Division of DOA's OEO have no way of knowing whether the State ES personnel are performing the required reviews—much less whether the reviews are of sufficient scope. Although the C&E Division has authority to request copies of these reviews, this has not been done in the past because of severe staffing limitations. Thus far, the only opportunity for departmental civil rights personnel to assess the adequacy of reviews performed by State ES personnel has been in the infrequent county reviews, discussed *infra*.

This Commission has criticized ES repeatedly for its failure to take action against State recipients clearly in noncompliance. The history of this failure is long and involved. In September 1970, DOA's Director of Science and Education, who oversees ES, issued a policy statement. Each State ES for which an assurance of compliance had not been accepted more than six years after enactment of Title VI was instructed to conduct a statewide compliance review of all its operating units before its assurance would be accepted by DOA. It was decided that the DOA ES Administrator would review each of these States.[58]

As for the reviews that have to be performed by departmental ES staff members, reviews were conducted between December 1971 and March 1972 in 62 counties in eight States for which assurances have not been accepted.[59] As of July 1972, the review report has not been issued.[60] Since a determination of whether the States are in compliance will be based on the reviews by State ES personnel and the Federal ES staff, it is imperative that there be no further delays.

In addition to these reviews, the Department civil rights staff conducted two countywide reviews—in Greene County, Alabama, in May 1971, and in Willacy County, Texas, in February 1972.[61] Review teams were composed of three or four specialists from the C&E Division and an equal number of program staff from the agencies administering programs in the county.[62] Despite the apparent success of these reviews they have been discontinued because of lack of staff.[63]

While the concept of countywide reviews had considerable merit, they were not as effective as they could have been.[64] If DOA decides to reinstitute this mechanism, it should develop a methodology to enable it to be more selective in choosing counties.

Food and Nutrition Service (FNS)[65]

Of the more than 180,000 FNS recipients subject to Title VI, approximately 6,100 were reviewed in Fiscal Year 1972. The principal review forms used are FNS-86 for institutions and nonprofit private schools and FNS 87 for public schools. Both forms are relatively superficial.[66] Both require the reviewer to provide enrollment and participatory statistics, but only estimates are necessary. Documentation is not required.

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[57] Reports on county, area, district and-or State ES offices reviewed by State ES personnel are summarized by each State ES in a report submitted to DOA's ES. This does not alter the fact that *individual* compliance review reports are not reviewed by Federal personnel.

[58] Eleven States were involved—Alabama, Arkansas, Florida, Georgia, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Texas, and Virginia.

[59] DOA Fiscal Year 1973 Budget Hearings, *supra* note 9 at Part 2, pp. 342-43. Three of the 11 States—Alabama, Mississippi, and North Carolina were not reviewed because of litigation, in accordance with Justice Department instructions. ES reports that Title VI also gets attention in program unit and comprehensive reviews. The former focuses on a specific program area, and the latter is a cooperative evaluative technique that assesses the State's overall extension programming operation.

[60] In both June and July, the C&E Division requested informat[illegible] when the reports would be available. As of July 26, 1972, there had [illegible] no response from ES.

[61] The objective was to make on-the-spot corrections of local deficiencies and recommend solutions to problems that may exist throughout the State or Nation. The reviews evaluated all DOA programs in the county but are described in this section because of the relative importance on the State ES system as a means of access to other programs.

[62] This included staff from ASCS, FHA, FNS, and SCS. 1971 OEO Annual Report, *supra* note at 4.

[63] The average length of these reviews was about 60 man-days. A team consisting of a C&E staff person and three Department of Justice attorneys performed a similar review in four counties in Louisiana. This was not a compliance review *per se*, but a report was prepared by the C&E staff member, informally endorsed by the DOJ attorneys, and submitted to the ES Administrator in August 1971. Although the report was supposedly sent to the State, as of July 1972 the C&E staff person had not heard what action the State had taken.

[64] Some DOA staff expressed reservations regarding the significance of these reviews and, correlatively, whether the substantial investment of manpower was justified without more work being done on framing the basic questions which the reviews sought to answer.

[65] It should be mentioned that FNS requires a semiannual civil rights status report (FNS-77) from all FNS regional offices, State educational agencies, and State distributing agencies. The report is simply a record-keeping device for indicating the number of reviews conducted, complaints received, and enforcement actions taken. See FNS Instruction 113-4, May 9, 1972.

One set of instructions for conducting reviews stipulates that the State agency responsible for providing cash assistance is usually responsible for reviewing Child Nutrition programs and the Food Distribution program.[67] There is also provision for more comprehensive special reviews if the State agency or FNS regional office believes there are likely to be compliance problems.[68]

It would appear that the FNS postaward reviews could be strengthened, both in number and quality.

Farmers Home Administration (FHA)

In Fiscal Year 1972, a compliance review of every Title VI recipient was performed—a total of 8,246 onsite postaward reviews. The type of review determines who conducts it.[69] Although the review guidelines are deficient in some respects, they are relatively complete. FHA officials, however, believe they have so strengthened the compliance review mechanism during the last year that the frequency of reviews can be reduced from once a year to once every three years, except in problem cases.[70] This reasoning is hardly compelling.

Other DOA Agencies

The number and quality of Title VI compliance reviews for the remaining constituent agencies vary considerably. For example, in Fiscal Year 1972 ASCS reviewed 3,691 of its 4,500 Title VI recipients. The Forest Service, on the other hand, reviewed only 2,245 of its more than 13,000 recipients.[71]

For the most part, the reviews performed for these agency programs are quite superficial. The REA review form is simply a checklist requiring only a "Yes" or "No" answer, with space for comments if necessary. The Forest Service form asks whether minority participation has increased since the last compliance review and whether the recipient has explained Title VI requirements to the employees. Both require a "Yes" or "No" response and an explanation for all "No" answers.[72]

Common to most of these reviews is the absence of any requirement for documentation. Some reviews take place only as a part of routine contract administration.[73] Given the limited Title VI implications of these programs, the scope of these reviews may be sufficient. Notwithstanding this, there seems to be little reason why the proportion of recipients reviewed could not be increased in many of the programs.[74]

E. Complaint Investigations

All formal complaint investigations[75] are conducted by the Office of the Inspector General (OIG), which also is responsible for routine audits.[76] Typically, Title VI complaints are received in the departmental Office of Equal Opportunity (OEO). That Office then sends the complaint to the agency involved,[77] which in turn transmits it to OIG. OIG evaluates the complaint to determine whether it should be docketed for investigation or returned to the agency for preliminary inquiries. In the latter instance, the agency is requested to establish some basic facts upon which OIG may base a full investigation.

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[66] FNS-86 goes into more detail in terms of admissions policies, housing, etc.

[67] FNS Instruction 113-3, Nov. 2, 1971. More specifically, State agency reviewers perform compliance reviews of the Child Nutrition program recipients. Reports are submitted to the FNS regional offices and are sent monthly by the regional offices to headquarters. Regional and State reviewers do the onsite monitoring of Food Distribution recipients. In the Food Stamp program compliance reviews are performed by staff in the regional offices.

[68] Specific guidelines tailored to the particular schools are developed for these special reviews. FNS and State agency personnel also perform compliance reviews in summer camps participating in the Commodity Distribution and Special Milk programs. See CFP (CD) Instruction 717-1, June 19, 1968. According to this instruction, at least 20 percent of the camps should be reviewed. Compliance review guidelines for summer camps are appreciably more comprehensive than those for public and private schools.

[69] The FHA county supervisor is the reviewing officer when direct assistance is involved. In the case of Title VI recipients—such as associations, organizations, or unincorporated cooperatives—the district supervisor or state director may designate a program loan officer for specific cases.

[70] Memorandum from J. V. Smith, FHA Administrator, to Jerome Shuman, Director, Departmental OEO, July 17, 1972.

[71] SCS reviewed none of its 1,200 recipients; AMS, 10 of 45; CSRS, 35 of 130; and FCS, 32 of 43. The number of reviews conducted of REA recipients was inexplicably listed as "not applicable." Yet several REA reviews were submitted as part of the DOA response. (See also REA Form 268, Rev. 7-70 and Staff Instruction 20-19:320-19, Sept. 9, 1971.) REA did report that on Dec. 1, 1971, a national office task force, consisting of nine program staff members, was established to conduct civil rights progress reviews dealing with Title VI and equal employment. As of July 1972, 18 such reviews had been made.

[72] No explanation is required for a "Yes" response. An explanation would be useful, since it possibly would better show, in quantitative and qualitative terms, how well the recipient is complying with civil rights mandates.

[73] This is the case for some ASCS programs. See Form ASCS-540 and accompanying review procedures.

[74] DOA's OEO performed a special compliance review of Forest Service programs in New Mexico to evaluate program delivery to rural Spanish surnamed residents. OEO staff also made some onsite reviews of REA-assisted electric and telephone cooperatives.

[75] Each agency head had been directed to develop a public notification plan designed to apprise the public, and especially minorities, of the availability of program benefits on a nondiscriminatory basis. Each field office is required to display a poster providing information on filing a complaint.

[76] OIG conducted civil rights audits of State Cooperative Extension Services, for example, in 1965, 1967, and 1969. Audits of Title VI programs are performed in three ways: "(1) as part of routine (cyclic) audits of agencies' management and fiscal integrity in the administration of their programs; (2) as part of a special review (program audit) of the nationwide operation of one or more individual programs administered by an agency; or, (3) as a special audit of the civil rights aspects of one or more agency programs in various locations throughout the country." Attachment No. 9 to July 5, 1972, letter from Earl L. Butz, Secretary of Agriculture, to Rev. Theodore M. Hesburgh, Chairman, U.S. Commission on Civil Rights.

[77] If the complaint is received directly by the program agency, departmental instructions make it clear that any complaint involving a minority individual, or received from a minority group organization, should automatically be treated as a discrimination complaint and forwarded to OIG. There is little control over situations not covered by these instructions—for example, when an agency perceives a complaint with subtle civil rights implications as being simply a program matter. These may be disclosed, however, in OIG program audits.

OIG simply performs a factfinding task. It is OEO which ultimately advises the agency regarding what should be done to correct discrimination. If the agency and OEO disagree about the proper remedy, the disagreement proceeds to the next highest level and all the way to the Secretary, if necessary.

Twenty Title VI complaints were received in Fiscal Year 1972. Two related to ES programs, two to FHA programs, and 16 to FNS programs.

One of the ES complaints, which alleged discriminatory services and employment practices, is being litigated. The other ES complaint, received in April 1972, alleged segregated restrooms in a county office. It is under OIG investigation.

The two FHA complaints involve allegations that FHA-assisted recreation associations denied use of the facilities to minorities. One of the complaints, received in September of 1971, has been investigated, and a report was prepared in July 1972. The report presents compelling evidence of discrimination, although the investigator refrained from specifically drawing such conclusions.[78] Whether the complainant's allegations have indeed been substantiated is, of course, important, and that determination ultimately will be made by OEO and FHA. It is noteworthy that, notwithstanding the thoroughness of the investigation, no disposition had been made of the complaint almost a year after it was filed.[79]

There may be some delay from the time a complaint is received to preparation of the investigation report. The real delay, however, seems to occur from the time the investigation report is prepared to when the case is closed.

DOA furnished this Commission reports on six investigations performed during Fiscal Year 1972. All but one of these complaints were listed as "pending." This is understandable in two cases, since the reports had not been prepared until June or July, 1972. In three instances, however, the investigations had been reported in July, August, and November of 1971, but no final disposition had been made as of July 1972. These delays are not explained, although it is possible that the Office of Equal Opportunity and the agencies involved cannot agree on what action is appropriate. Whatever the reasons, some method of expediting the resolution of complaints is needed.

IV. ENFORCEMENT ACTIONS

Almost 23,000 onsite postaward compliance reviews were conducted by DOA in Fiscal Year 1972 on its more than 213,000 Title VI recipients, and not one recipient was found to be in noncompliance. Of the 974 preapproval reviews performed by FHA and REA, only one applicant was barred.[80]

DOA actions against recipients have been limited for the most part to civil litigation. The most noteworthy suit involving a DOA recipient has been the *Strain* v. *Philpott* case, decided in September 1971.[81] The court found that the Alabama Extension Service's employment practices and program performances were permeated with discrimination. The court perscribed specific procedures for preventing future discrimination and for correcting the effects of past discrimination.

The Department of Justice intervened on the side of the plaintiffs against the Extension Service. Members of the Compliance and Enforcement Staff assisted the Department of Justice in preparing the case. Similar litigation is pending against the Mississippi and North Carolina Cooperative Extension Services.[82]

At the request of the DOA Extension Service, the Department of Justice developed guidelines to assure compliance with the *Strain* decision. ES personnel used these guidelines and, with the assistance of OEO staff, developed an "Affirmative Action Plan for meeting Nondiscriminatory Legal Standards in Employment and the Conduct of all Programs by State Cooperative Extension Services."[83] Each State, except those in which litigation was pending, was required to develop an affirmative action plan consistent with the *Strain* standards.

At first, State plans were required by July 1, 1972, with full implementation to occur by December 31, 1972. The deadlines now have been moved back to September 1, 1972, and February 28, 1973, respectively.[84] This gives the State Extension Services 10 months to develop a plan and a full year to implement the plan.

Each State Extension Service is required to submit a compliance report by March 28, 1973. Failure of the

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[78] In the case of another complaint investigation, however, the investigator made a specific finding which refuted one of the complainant's allegations.

[79] It is conceivable that the complaint referred to in DOA's summary response as being received in September of 1971 and the copy of the July 1972 investigation report forwarded by OIG involve two separate incidents. This does not appear, however, to be the case.

[80] Attachment to July 21, 1972, letter from Frank B. Elliott, Assistant Secretary for Administration, DOA, to Caspar W. Weinberger, Director, Office of Management and Budget.

[81] 331 F. Supp. 836 (M.D. Ala. 1971).

[82] *Wade* v. *Mississippi Cooperative Extension Service*, Civil Action No. EC 7029K (N.D., Miss), filed April 1970; *Basemore* v. *North Carolina Cooperative Extension Service*, Civil Action No. 2879 (E.D.N.C.), filed November 1971.

[83] Issued Feb. 28, 1972.

[84] The Office of Equal Opportunity objected to setting back the deadlines but was overruled.

State Extension Services to meet the deadlines ostensibly will result in Title VI enforcement proceedings. Given past events, however, this likelihood is remote.

As the plans are received, they are reviewed by both OEO and ES personnel. Comments on unacceptable provisions are sent back to the States.[85] Beginning in April 1973, the Office of the Inspector General will make a series of civil rights audits in selected States to ascertain the level of compliance. No excuse will remain for delays by DOA in terminating assistance to recipients if discrimination is found in either their employment or services.

V. MINORITY REPRESENTATION ON DECISONMAKING BODIES

As noted earlier, minority group persons are underrepresented on many of the decisionmaking bodies that develop and implement agriculture programs. This situation exists with respect to such bodies as ASCS committees (discussed *supra*), boards of REA-supported cooperatives, and Rural Development Committees.

Rural Development Committees illustrate the point. These committees have been established at the national, State, and county levels.[86] The national and State committees consist of representatives from the Forest Service, Soil Conservation Service, Farmers Home Administration, Rural Electrification Administration, State Cooperative Extension Service, and the Economic Research Service.[87] These committees develop general policies, programs, and priorities pertaining to rural development. Details of the development process, however, are the responsibility of county (or other local) committees.[88] Therefore, as noted in a recent DOA study, "the membership on county committees is a better reflection of community involvement than is representation on State or district commitees"[89]

The DOA study examined, in part, county committee membership in 16 Southern States where blacks are the predominant minority.[90] The study compared rural census data for each State with the racial composition of all county committees—recognizing that State aggregates might obscure local population concentrations.

Nonetheless, the statistics are most disturbing. In Alabama, for example, blacks constitute more than 23 percent of the rural population but only 10 percent of the county committees' membership. In Arkansas, where the rural population is about 16 percent black, the membership of blacks on county committees is less than 2 percent. The situation in Louisiana, Maryland, Mississippi, and South Carolina is equally, if not more, disconcerting. County committees in the other States reflect a more favorable balance.

Given the role these committees play in allocating DOA resources, the memberships should be more representative. The committees are recipients of DOA assistance, so the applicability of Title VI should be carefully considered.[91]

VI. ORGANIZATION AND STAFFING

In November 1971 the Office of Equal Opportunity (OEO) was established at the departmental staff level with the Director reporting directly to the Secretary.[92] During Fiscal Year 1972, both the Title VI and direct-assistance programs were handled by two small staff units within OEO. The Program Evaluation Division, consisting of two professionals, is responsible for coordinating and evaluating the civil rights reporting systems in each of the Department's constituent agencies. The Compliance and Evaluation (C&E) Division, consisting of 17 professionals, is responsible for monitoring the constituent agencies' civil rights performance.

OEO's staff has been insufficient to assure an adequate level of performance.[93] An integral part of the C&E Division's monitoring has been onsite reviews, but these have had to be curtailed because of severe staffing limitations. An anticipated increase of 20 professionals in Fiscal Year 1973 is expected to substantially upgrade the OEO's oversight capabilities.

Six of the 11 constituent agencies have full-time civil rights staffs. In five of these agencies, one or more persons devote more than half-time to Title VI enforcement. The Food and Nutrition Service leads with a total of six. The Extension Service has three; Farmers Home Administration, two; and the Agricultural Stabilization and Conservation Service and the Forest Service each have one.

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[85] Some plans already have been submitted and reviewed.

[86] Secretary's Memorandum No. 1667 (Rural Development Program), Nov. 7, 1969.

[87] *Rural Development*, A Report to the Congress, Sept. 1, 1971 at 5.

[88] There were 2,090 county committees in 30 States in Fiscal Year 1971, plus 184 area or district committees in 25 States.

[89] *Composition of Rural Development Committees*, DOA study (undated).

[90] Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia.

[91] Responding to a Commission question concerning DOA's position on applicability of Title VI to planning or advisory bodies which receive Federal financial assistance, DOA mentioned only unspecified national advisory committees. The Assistant Secretary for Administration, in correspondence to agency personnel, noted that the Office of Budget and Finance made a survey and found minorities and women underrepresented on advisory committees. He instructed all agencies "to assure adequate representation . . . on all advisory committees. Memorandum from F. B. Elliott, Assistant Secretary for Administration, to various departmental personnel, Sept. 22, 1971.

[92] Secretary's Memorandum No. 1756, Nov. 16, 1971.

[93] Only 10 of the 40 full-time professionals on the OEO staff devote more than half their time to Title VI enforcement.

Most of the constituent services and administrations—such as CSRS, ES, FHA, FNS, FS, and REA—have identified the need for additional staff in order to discharge their Title VI responsibilities fully, but it is difficult to assess these manpower needs with any precision.[94] It will be necessary for OEO to identify specific deficiencies in the course of its monitoring and determine, based on experience, the manpower needed to correct them.

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[94] Nonetheless, it seems somewhat anomalous that Federal ES personnel devote the same amount of time to Title VI matters—approximately 12 man-years—as the Forest Service staff.

DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION (EDA)[1]

I. OVERVIEW

EDA's Title VI compliance program is structurally sound. Procedures have been developed for conducting preaward and postaward reviews, for evaluating affirmative action employment plans, and for ensuring minority representation on planning bodies. A data collection system will help EDA's Office for Civil Rights set compliance priorities. The Office appears to be aware of its problem areas and is seeking ways of overcoming its weaknessess.

Several areas, however, continue to need concentrated effort. The small number of onsite compliance reviews is a serious problem and should receive priority attention. EDA should discontinue accepting affirmative action plans that do not comply fully with its model requirements for minority employment.

Since the compliance program now includes sex discrimination, the staffing pattern should be reassessed to ensure that adequate staff is provided for all required tasks. Staff should be assigned to regional offices in accordance with workload and need for compliance work.

II. PROGRAM AND CIVIL RIGHTS RESPONSIBILITIES

The programs of the Economic Development Administration fall into four broad categories: technical assistance, business development loans, economic planning grants, and grants and loans for public works and development facilities. EDA's Title VI responsibilities are unique in that they cover Federal grant programs whose major purposes include providing employment—specifically in areas of substantial and persistent unemployment and underemployment. Hence, the employment practices of its recipients are covered by Title VI.[2] Enforcement of equal employment opportunity standards among its grant recipients is EDA's primary civil rights responsibility.

III. COMPLIANCE MECHANISMS

A. Data Collection

In the past EDA lacked information on the number, race, ethnicity, and sex of those employed by EDA-funded projects. EDA is preparing a data processing system which will use information submitted by grant applicants (Form 612) on the number of projected jobs and on the race and ethnicity of the prospective employees. This information will be compared with that obtained from the EEO-1 Form—required by the Equal Employment Opportunity Commission (EEOC)—which reports information on actual employment. Racial and ethnic data from other EDA forms, along with census socioeconomic data, will be computerized to provide background information for preapproval reviews and general information on an area's equal opportunity position. The computerized information also is designed to improve the EDA Civil Rights Office's ability to set priorities for compliance reviews.

B. Complaints

During Fiscal Year 1972, EDA received four complaints. Two, involving discriminatory employment practices, were found to be valid.[3] One, received in April 1972, was in the process of conciliation as of July 12. The other has been resolved to the satisfaction of the complainant.

EDA finds complaints pertaining to employment easier to handle than those relating to services, since the former situations tend to be more clear-cut. Complaints about services generally require the fashioning of more individualized remedies.[4]

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[1] The Maritime Administration also has Title VI responsibilities. However, all its recipients also are covered by Executive Order 11246, and Title VI compliance is regularly checked during contract compliance reviews.

[2] Section 604 exempts employment practices from the purview of Title VI, except where a primary purpose of the assistance program is providing employment.

[3] Investigations proved the other two complaints invalid. A complaint from Alabama alleged different water-hookup charges, based on race. The findings revealed one price for all, regardless of race and income. The other complaint, from Virginia, alleged separate and segregated Overall Economic Development Program (OEDP) planning committees. This was found not to be the case.

[4] For example, prior to the requirement that a map be furnished of proposed public works facilities to show minority communities, EDA received a complaint from Cleveland, Ga., which involved elimination of the minority area from a project because of a cost overrun. The city engineer had made the decision from an engineering and cost-priority point of view. To resolve the situation, EDA approved a subsequent grant which allowed the city to retain the minority area within the project.

C. Affirmative Action Plans

EDA requires its recipients to file affirmative action plans ensuring equal employment opportunity. A weak link in EDA's compliance program—which is good in most respects—is that it has not consistently sought full compliance with this requirement. Departmental civil rights officials believe EDA is accepting affirmative action plans which do not fully conform with model requirements and which continue to allow underutilization of minorities in white-collar employment. Minority employees and projected minority employees are often in low-level positions. No minority hirings are projected or indicated at the managerial level, and few are at the clerical level.

EDA's minimum goal for minority participation in its programs is to equal the minority percentage in the project area's population. The agency solicits, through its Form 612, statistics on actual and projected employment of minorities and women. EDA's Civil Rights Office reviews each form, measuring minority and female employment and distribution in the work force againt relevant population and work force statistics. In the future, in order to improve compliance with affirmative action requirements, all plans are to be reviewed in Washington as well as in the field.

D. Compliance Reviews

In addition to accepting weak affirmative action plans, EDA does a poor job of monitoring implementation of the plans. It conducted only 26 postaward, onsite compliance reviews in Fiscal Year 1972, while new projects involving 1,156 recipients and substantial beneficiaries were being approved. These recipients and substantial beneficiaries were added to the more than 6,000 recipients and beneficiaries approved for EDA projects since 1965.

Using increased manpower, EDA hopes to improve its onsite monitoring. To improve compliance review activity by the field staff, the Director of the Office of Civil Rights now requires a quarterly reporting of compliance reviews to be conducted during the next quarter. The report is checked to determine if the scheduled reviews are in accordance with priorities. The report also is used to measure the number of reviews planned against the number conducted. In addition, Washington staff members can use the report to select reviews in which to join the field staff as a monitoring device.

Directive 7.03, Title VI Compliance Review Procedures, is being revised and updated on the basis of experience. The revised version will have tighter procedures for general compliance reviews and new ones covering sex discrimination.

E. Preapproval Program

The preapproval program for water and sewage projects evaluates a community's equal opportunity posture on the basis of the submission of substantial amounts of racial and minority group data, and is working fairly well. All applications are reviewed by field civil rights staff for forwarding to the Washington office. The latter office must sign off on all grants before final approval.

Preapproval procedures are being improved—as a result of computer analysis and experience—to yield a more thorough analysis of projects, project areas, and beneficiaries. More detailed investigations are to be made of companies against which complaints have been filed with other compliance agencies and EEOC. In the past, such investigations were perfunctory.

IV. REPRESENTATION ON PLANNING BODIES

EDA's most successful effort to date has been its Directive 7.06, requiring minority representation and employment in Development District Organizations, County and Multicounty Planning Organizations, and Overall Economic Development Program Committees. The Directive establishes minimum minority representation, implementation procedures for selection and approval of minority representatives, and affirmative action requirements for staff employment of minority persons.

In general, the Directive requires that minority representation on planning and development organizations equal or exceed that percentage of the minority population within the area served.[5] The boards were given 6 months—until December 1971—to develop plans to implement this requirement. They were required to set a time limit and to list minority organizations from which they hoped to get cooperation. Organizations requesting EDA funds for the first time must be in compliance before assistance is approved. Organizations that received assistance prior to June 1, 1971, were to be in compliance by December 1972.

Results have been mixed. All Western States are in compliance with the time schedule, but only 25 percent of the Southeastern States are. Presently, one district in Georgia has been given notice of a hearing for noncompliance. Another district matter is awaiting determination by EDA's Chief Counsel. Several other districts have minor compliance problems. About 30 percent of the districts are in full compliance with regard to both staffs and boards.

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[5] There are two exceptions:

a. If the minority population equals or exceeds 5 percent but the board or OEDP committee is not large enough to meet the representation standard, there must be at least one minority representative.

b. If the minority population exceeds 25 percent, minority representation need not be greater than one-fourth.

The Directive also requires that membership on any executive committee (i.e., the group on a board delegated to act in behalf of the board) reflect the ratio of minority representation on the board.

V. MISCELLANEOUS

The program area for which EDA has minimal Title VI procedures is technical assistance. EDA technical assistance is available to alleviate or prevent excessive unemployment and underemployment—or to solve other problems of economic growth—through feasibility studies and management and operational assistance. The Office of Civil Rights anticipates that detailed guidelines for the technical assistance program will be developed by December 1972.

VI. ORGANIZATION

A. Structure

Overall responsibility within the Department of Commerce for Title VI activities and enforcement rests with the Assistant Secretary for Administration. Primary operational responsibility has been delegated to the Department's Office of the Special Assistant for Civil Rights, which performs a coordinative and guidance function. To keep abreast of progress and problems, the Department's Office periodically conducts studies of EDA's Office of Civil Rights and its field operations. The Office of the Special Assistant is studying the effectiveness of EDA's Title VI program, and the results are to be ready by mid-September.[6]

The organization of EDA's Office of Civil Rights and its field offices remains the same as in October 1971. The Director of the EDA civil rights program feels she receives sufficient support from the Deputy Assistant Secretary for Economic Development, who supervises her work and that of the regional directors. The Deputy Assistant Secretary makes the final decision in all matters upon which there is disagreement between the Director of Civil Rights and regional directors.

EDA has reorganized its six regional offices to conform with the standard Federal regions. New regional offices have been opened in Denver and Atlanta. The Huntington and Huntsville offices were closed, and their workloads were split between Philadelphia and Atlanta.

B. Staffing

As of July 1972, the number of full-time professional staff positions assigned to EDA's Office of Civil Rights increased from 15 to 20. The positions were allocated thusly:

	New Positions	Total
Washington	2	8
Atlanta	1	3
Seattle	1	2
Denver	1	1
Chicago		2
Austin		2
Philadelphia		2
	5	20

EDA's major workload is in the Southeast and Southwest. As yet, those regional offices—Atlanta and Austin—are not adequately staffed. The reasons, as stated by the Directors of both the Departmental Civil Rights Office and EDA's Office of Civil Rights, are shortage and poor quality of manpower. The Director hopes to improve staff effectiveness with training and personnel changes, although reassignment of staff or positions from one region to another has not proven administratively feasible.

The EDA legislation was amended in August 1971 to extend coverage to sex discrimination,[7] and EDA is revising its regulations accordingly. Whereas racial and ethnic discrimination problems are concentrated primarily in the Southeast and Southwest, all regions will have sex discrimination cases and therefore will require additional staff. If the compliance program keeps its present staffing level and fully accepts responsibility for sex discrimination, it will dilute attention paid to other problems.

C. Training

EDA holds an annual staff development conference for regional civil rights staff. This year's 3-day program included workshops on goals and priorities, compliance reviews, racial data collection, implementation of Directive 7.06, and legal considerations in Title VI enforcement procedures.

No formal Title VI training is given program officials but there appears to be a close working understanding between these officials and civil rights specialists. Since EDA Title VI regulations cover most phases of project processing, the personnel involved are familiarized with Title VI enforcement on the job. Project officers in the field frequently explain civil rights requirements to prospective applicants. The project officers are given instructions and necessary materials by their respective civil rights field offices.

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[6] A similar study was performed by the Justice Department's Title VI Section. Although that study was not made available to this Commission, it is understood that the study found that EDA is accepting weak affirmative action plans and lacks an effective postaward compliance program.

[7] 42 U.S.C. 3123 (1971).

ENVIRONMENTAL PROTECTION AGENCY (EPA)

I. OVERVIEW

Although EPA is a relatively new agency, its staff has exhibited considerable energy in developing an effective Title VI enforcement mechanism. Notwithstanding the apparent sensitivity and inventiveness displayed by some staff members in dealing with possible Title VI violations, much policy remains to be formulated. EPA has not adopted goals and timetables regarding minority participation in agency programs; has not developed policy relating to exclusionary zoning or the employment practices of recipients; and has not fully determined the Title VI implications of its programs, aside from the construction grant program.

Although the construction program is clearly the largest in dollar amount, this does not obviate the need for an enforcement program for the smaller programs. And even in the construction program, all Title VI issues have not been fully met.

EPA's regional civil rights staff has signoff authority on all construction grants and uses a preapproval system designed to obtain the information necessary to make a reasoned judgment. The effectiveness of this system is diminished, however, by the absence of comprehensive guidelines on evaluating the preaward reviews. Detailed guidelines also should be developed for conducting complaint investigations and onsite preaward and postaward compliance reviews.

Finally, the receptivity of EPA staff to a progressive Title VI enforcement program becomes almost academic in light of the present staffing level. With four people—only one of whom is in the field—devoting more than half their time to Title VI matters, there is little hope of EPA developing a comprehensive compliance program. The cumulative contribution of other regional civil rights personnel is minimal and cannot elevate the compliance operation to its proper status.

II. PROGRAM AND CIVIL RIGHTS RESPONSIBILITIES[1]

The Title VI enforcement program at EPA[2] is focused almost entirely on the Waste Treatment Construction Program.[3] In dollars, this program accounts for about 90 percent of EPA's grants.[4] Recipients may be any State, interstate, or municipal agency with jurisdiction over waste disposal.[5]

All applications are submitted through State water pollution control agencies to an EPA regional office. The importance of the State pollution control agency in this decentralized grant process cannot be overemphasized. These agencies establish priorities by which local jurisdictions—municipal, county, and district—receive Federal assistance.[6] When the application receives State approval, it is forwarded to an EPA regional office to ensure conformity with EPA's engineering and civil rights standards.

State water priorities apparently are not reviewed by EPA from a civil rights perspective. EPA does not routinely monitor applications which are simply rejected by the State agencies. The absence of such a monitoring mechanism may well contribute to concealing questionable State agency practices; e.g., a pattern of State priorities which clearly favors predominately white jurisdictions over predominately minority localities.[7]

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[1] This is the Commission's first review of EPA's Title VI enforcement mechanism.

[2] EPA, created in December 1970, is a regulatory agency charged with primary responsibility for administering Federal pollution control programs. This includes air and water pollution control, solid waste management, pesticide control and management, and activities involving noise abatement, water hygiene, and radiation.

[3] EPA has concentrated its enforcement efforts on this program to the exclusion of its other grant-in-aid programs. One of the reasons is lack of staff and time to assess the civil rights implications of all the grant programs coupled with the fact that preliminary assessments suggested little possibility for Title VI violations in other programs.

[4] The Fiscal Year 1973 authorization for these grants is $5 billion. The Fiscal Year 1973 allotment, however, will be only $2 billion. EPA made about 2,000 grants during Fiscal Year 1972, of which 767 were for building sewerage treatment facilities.

[5] There are matching grant requirements in this program. The basic Federal grant covers 30 percent of the project costs. However, this may be increased to more than 50 percent if a State defrays at least 25 percent of the project costs and has enforceable water quality standards.

[6] "Projects considered for award must be approved by the State water pollution control agency and also certified by such agency as to priority over any other eligible projects." Office of Management and Budget, 1972 Catalog of Federal Domestic Assistance, Par. 66.400.

[7] The EPA Administrator has stated that this is one area which could be strengthened. Testimony by William D. Ruckelshaus, EPA Administrator, at Hearing Before the U.S. Commission on Civil Rights, Washington, D.C., June 15, 1971 (at 1006). Such a pattern might become evident in civil rights reviews of pending applications. Furthermore, it is the opinion of one EPA official that discrimination usually manifests itself at the municipal (and not at the State) level in terms of where sewers are built and, likewise, how they ar financed.

The thrust of EPA's Title VI enforcement effort has been toward ensuring that communities receiving construction funds for treatment facilities do not discriminate on racial or ethnic grounds in serving the public.[8] EPA's efforts in this regard are complicated by the fact that its assistance is not contingent on the funded municipality building a treatment plant which will serve the entire jurisdiction.[9]

EPA published a proposed Title VI regulation in June 1972.[10] This regulation incorporates—and, for the most part, improves upon—the innovative provisions which appear in the Department of Transportation's model Title VI regulation.[11] EPA's regulation, however, unlike DOT's, does not include an appendix specifically delineating the kinds of discrimination possible in various program areas. The appendix is absent because EPA has not completely catalogued types of potential discrimination.

III. COMPLIANCE MECHANISMS

A. Preapproval Reviews and Compliance Report Forms

EPA's compliance effort emphasizes preapproval review. Each applicant is required to complete a compliance report form before the grant is awarded.[12] If the area to be served by the project contains less than the applicant's total population, a series of questions must be answered.[13] The applicant must indicate whether any areas presently not receiving sewer service have minority populations in excess of 10 percent.[14] EPA uses the racial and ethnic data supplied in the report form and maps to determine whether disproportionate numbers of the unserved population are minorities.[15]

During Fiscal Year 1972, EPA staff performed 767 preaward Title VI reviews. This represented at least a paper review of every recipient of a construction grant for treatment facilities. Additionally, the staff conducted some onsite compliance reviews prior to the grant. Essentially, these reviews consisted of interviews with local government officials and members of the minority community. However, no guidelines for these onsite reviews have been developed. This step should get high priority if comprehensiveness and uniformity in review procedures are to be assured.

Examination of a sampling of report forms handled by the EPA civil rights staff person in the Atlanta Region disclosed an awareness of the issues and, for the most part, an ability to devise and promote innovative solutions.[16] Even in the case of this staff person, there was some question whether the action taken was always the most appropriate.[17] In this regard there would seem to be a clear need for detailed guidance for all regional civil rights personnel in achieving voluntary compliance.

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[8] It should be noted that the recipient's method of funding its matching obligation (e.g. out of general tax revenues or through a special assessment) dictates, in part, EPA enforcement posture where disproportionate numbers of minorities go unserved. The simplest approach is to finance sewers from general tax revenues. However, most local funding comes from some kind of assessment. EPA takes the position that each segment of a jurisdiction should determine whether it wants to be assessed. However, the assessment may be prohibitive to poor communities, which are often disproportionately minority.

[9] Additionally, the EPA Administrator has noted that conflicts may arise in the agency's discharge of its Title VI and environmental mandates. He has indicated that where possible the requirements of the laws will be read together. He has implied, however, that where the mandates cannot be reconciled, the environmental one will take precedence: "If a violation to Title VI occurs we must be called upon to deny financial assistance to a community, which could result in the suspension of compliance with antipollution standards and timetables. . . . However, we must recognize that each case must be decided on its own merits and that the needs of the community will be important in the determination of what mandate receives priority." Ruckelshaus testimony, *supra* note 7, at 1006-07. (See also 151.) Since EPA does not have the funds to assure compliance with water quality standards in every local jurisdiction, the agency should be highly selective in making grants.

[10] The final version has been prepared and will be submitted to the Department of Justice for clearance. (Opportunity for comments was afforded, 37 F. R. 11072 et seq.) Prior to issuance of the final version, EPA will continue to operate under Title VI regulations of Interior and HEW.

[11] 49 C.F.R. Part 21. The innovative provisions relate to employment practices, affirmative action, and site selection. In terms of improvement, EPA's proposed regulation has, for example, added a provision prohibiting discrimination in the selection of planning or advisory board members (proposed 40 C.F.R. 5.4 (b) (VII), and broadened who may file a complaint (proposed 40 C.F.R. 5.8 (b)).

[12] Form FWPC-T128. Submittal of this form prior to grant approval corrected a serious deficiency in former procedures. Previously, the form was not available until after the application was approved and occasionally not until construction was underway. This precluded anything but symbolic civil rights sign-off authority.

[13] If the entire population is to be served, this *apparently* obviates the need to complete the form. If so, this disregards the fact that there may be qualitative disparities in services, coinciding with racial concentrations.

[14] In the case of nonserviced areas with minority populations exceeding 10 percent, the EPA regional office *typically* requires demographic maps setting forth the racial and ethnic compositions of areas served and unserved by the proposed facility. Whatever the percentage of minorities in the unserved population, the applicant must explain why service has not been provided to a segment of the eligible population. A plan and timetable for providing such services must be submitted.

[15] Although the report form has been supplemented by a July 1971 directive (which outlines the procedure for reviewing the form), the 10 percent figure may be somewhat misleading. The directive specifies that applications should be carefully reviewed where a "significant percentage of the applicant's minority population remain unsewered upon completion of the applicant's project." The form itself refers to 10 percent—suggesting, for one thing, that where the minority percentage of the nonserved population is less than 10 percent, maps are not necessary. The danger in implying that 10 percent is a magic number seems obvious. It should be made clear that an application should be scrutinised wherever the percentage of minorities in the unserviced areas cumulatively exceeds the percentage of minorities in the entire eligible population.

[16] It is not entirely clear whether the caliber of work of the Title VI specialist in the Southeast Region is matched in other regions. That is unlikely, since Atlanta is the only region with even one individual who devotes more than 50 percent of time to Title VI enforcement. (See discussion *infra*.)

[17] By way of illustration, upon receipt of the compliance report form from an applicant, it was determined that a substantial number not being served by the proposed facility was nonwhite. The applicant explained that services were provided upon request, and minority residents have not requested the services. At EPA's request, a survey was conducted to ascertain whether minority residents, in fact, wanted such services. Almost all did. As a result, EPA required the applicant to submit an affirmative plan for providing sewerage service to these areas in the future. The applicant adopted a binding resolution designating the predominantly minority area as the number of priority after the project under consideration by EPA was approved and begun. The resolution stipulated that "it is the genuine expectation that said improvements can be made within . . . five years, subject, however, to financing abilities of said sewer district." (Footnote continued . . .)

B. Postaward Compliance Reviews

EPA conducted only one onsite postaward Title VI review during Fiscal Year 1972. Given the nature of EPA's grants, it is understandable that preapproval reviews be emphasized at this point. This does not, however, minimize the need for routine followup reviews once the grant is awarded.

C. Complaints

EPA processed 23 Title VI matters, formal and informal, during Fiscal Year 1972. Some resulted from complaints and others from compliance reviews.[18] Six cases involved exclusionary zoning (discussed *infra*). On this number, no action has been taken in four cases, pending establishment of EPA policy; one case has been withdrawn by the complainant; and another, involving EPA as a defendant, is being litigated.

Of the 17 remaining cases, two have resulted in findings of no discrimination, eight have been satisfactorily adjusted, and seven are being investigated or conciliated. No guidelines for investigating these matters have been developed.

Most cases not involving exclusionary zoning were satisfactorily resolved within a relatively short period —on the average, three to four months.[19] Of the seven cases under investigation or conciliation, six have been pending for less than three months, and in none of these cases has a grant been awarded. The remaining case, involving possible racial discrimination by a religious group has been under conciliation for about seven months.[20]

The volume of Title VI complaints suggests, in part, that potential beneficiaries of EPA assistance are becoming more aware of the Title VI implications of the program. This, in turn, underscores the need for comprehensive investigation guidelines.

D. Monitoring of Field Compliance Activities

EPA's Washington civil rights office monitors Title VI field operations by means of reports routinely submitted by memorandum or telephone. To illustrate, the Title VI specialist in the Atlanta Regional Office periodically submits detailed activity reports outlining cases with substantial Title VI implications. Uniform Title VI activity reports, however, are not required from all regional civil rights offices. A standard report form will go into effect in August 1972.[21]

There is no routine onsite monitoring of Title VI operations in the field by headquarters Title VI staff, although such activity is projected for Fiscal Year 1973.[22] Such monitoring is essential to a uniformly adequate compliance program.

IV. ENFORCEMENT PROCEEDINGS

EPA has not barred any prospective recipients from any program. Voluntary compliance has been secured in every case where there was an apparent violation of Title VI. There is clear indication that grants are not made when an investigation of an alleged Title VI violation is pending. EPA relies heavily on simultaneous conciliation and investigation. It evidently has not been faced with a situation where a satisfactory accommodation could not be made.[23]

EPA officials seem to be overly reliant on negotiation. They display an aversion to invoking the administrative sanction of fund cutoff. Although the EPA Administrator has testified that the institution of debarment proceedings would make EPA's Title VI enforcement mechanism more effective, he has noted that this "could result in the suspension of compliance with antipollution standards and timetables."[24] Thus, there is considerable indication that EPA will be as reluctant as other agencies have been to terminate funds, although perhaps for different reasons.[25]

There is some uncertainty about the remedy EPA might seek when a recipient has constructed a facility

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In fairness to EPA, its civil rights staff members seem cognizant of the implications of resolutions which make future construction contingent on available financing. In each case examined by Commission staff, the prospects for future financing were carefully weighed. In a case similar to the one described, the application was resubmitted and a larger Federal grant was requested for the purpose of including the unserved population at the outset—even though this meant a larger obligation of local matching funds.

[18] EPA listed five complaints (four of which related to exclusionary zoning in communities in Connecticut) which were presumably a direct result of letters from private parties. Eighteen additional "complaints" are listed. It should be noted, however, that these emerged as a result of EPA's compliance reviews.

[19] It should be noted that satisfactory adjustment simply connotes that EPA is satisfied that the situation *will* be corrected. Considerable followup will be needed to assure compliance.

[20] In this case an investigation has been conducted jointly by EPA and EDA.

[21] The form is designed to report on Title VI cases. In its present draft form, it is intended to be transmitted from the Director of the Civil Rights and Urban Affairs Office to a subordinate, the Chief of the Title VI Branch.

[22] As of Sept. 16, 1972, copies of all compliance reports submitted to regional EPA staff also will be forwarded to headquarters EPA staff for review.

[23] Testimony by the EPA Administrator before this Commission cites numerous examples of successful negotiation; e.g., Sealy, Tex., where the city agreed to extend sewerage services to the predominately black section of the city, and Boca Raton, Fla., where the community agreed to install connecting lines to serve the entire minority community. EPA's response to an OMB questionnaire indicates, however, that two "deferral status" letters were issued in Fiscal Year 1972.

[24] Ruckelshaus testimony, *supra* note 7, at 1005-70.

[25] Take, for example, the case of a jurisdiction which has applied for EPA funds to assist in the construction of a sewage treatment facility in order to abate pollution which violates both Federal and State water quality standards. Suppose a predominantly minority portion of this jurisdiction is the only area without sewerage services and the jurisdiction has no plans to install connecting lines from the proposed facility to serve this area, although the plant has the capacity to serve it. If the applicant persists in its position and cannot possibly finance construction of the entire facility out of its own funds, EPA's

and postaward review discloses discrimination which cannot be corrected by voluntary compliance.[26]

V. MISCELLANEOUS ISSUES

A. Minority Representation on Planning or Advisory Bodies

EPA's position on Title VI's application to membership on planning, advisory, or supervisory bodies appears in its proposed Title VI regulation. The pertinent section stipulates that denying a person—on grounds of race, color, or national origin—the opportunity to participate in a program's planning or advisory body is prohibited. Although this provides coverage not afforded by other agencies' Title VI regulations, it is considerably more narrow than the requirements imposed by the Economic Development Administration (EDA) of the Department of Commerce and those proposed by the Law Enforcement Assistance Administration. The relevant EDA directive, implementing Title VI, imposes, with some limitations, minority representation proportionate to the recipient's minority population. LEAA's proposed guidelines, also tied to Title VI, would presume a Title VI violation if minority membership is proportionately low.

EPA appears to be at the stage of attempting to ascertain the extent to which planning bodies receive Federal financial assistance, serve as conduits for assistance, or develop plans which establish how Federal funds will be allocated. EPA's next step is to decide whether or not to adopt a requirement similar to EDA's.[27]

B. Coverage of Employment Practices of EPA Grantees

EPA has not taken a position regarding the issuance of an equal opportunity regulation, independent of Title VI authority, which would cover employment practices of all recipients of EPA assistance.

C. Goals and Timetables

EPA has not adopted any goals or timetables for minority participation in the agency's grant programs. Consideration will be given to adopting such goals. This could be done, with relative ease, in a number of ways. For example, States could be required to give priority, in certifying applicants, to applications which include effective goals for minority participation.

D. Exclusionary Zoning

EPA has several cases pending which involve exclusionary zoning. The specific issue raised is whether EPA should provide funds to an applicant that has inadequate low- and moderate-income housing because of zoning policies which tend to exclude low-income families. These families are often disproportionately minority.

EPA is progressing with the legal research necessary to determine the civil rights implications of such zoning practices vis-á-vis EPA's grant programs.[28] Although Title VI is being considered as possibly applying, such a policy would no doubt be grounded in large part on Title VIII of the Civil Rights Act of 1968.[29] In this regard, HUD is looking into the applicability of Title VIII to exclusionary zoning and has agreed to let EPA set forth a draft policy.

VI. ORGANIZATION AND STAFFING

EPA's organizational structure for Title VI enforcement resembles that of many other agencies. The direc-

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only recourse is to bring court action to force the community to abate the pollution. The jurisdiction might then be forced to rely on EPA funds which would be conditioned on the recipient's compliance with Title VI. The Administrator, however, seems reluctant to go this route. As he has indicated, "even if EPA were to go into court and get an injunction . . . we are probably talking about a considerable delay in the adequate treatment of the wastes of the citizens of that community and of the upgrading of water quality standards to comply with the law in order to achieve the purpose of Title VI."

[26] This could happen if a community, as a condition to receiving an EPA grant, had agreed by resolution to provide services within three to five years to the unserved population, disproportionately minority, and failed to implement its plans. EPA's regulations (40 C.F.R. 30.404) stipulate that noncompliance with grant conditions, which include Title VI, may result in annulment of the grant and recovery of all funds disbursed, plus an injunction to force specific performance and other steps. To maximize the chances of an applicants' complying with such a resolution EPA should require that the resolution itself be made a condition of the grant.

[27] Recent correspondence from EPA indicates that the Administrator has committed the agency to ensuring that representative numbers of minorities and women are included among the membership of the agency's advisory committees. There are 14 Public Advisory Committees upon which EPA relies for advice. (See EPA booklet entitled *U.S. Environmental Protection Agency Public Advisory Committees*, prepared by the Committee Management Staff, Management and Organization Division Office of Planning and Management, Sept. 1, 1972.) Of these 14 committees, there are eight for which EPA has final appointing authority. An agency directive issued in December 1971 (Order No. 1385.13, covers management of interagency and advisory committees and requires that nominations for membership to the advisory committees include "qualified women, youth (30 or under), members of the public, and minority groups." As a result, EPA has substantially increased minority representation to the point where, as of July 1972, 19 of the 95 members of the eigth committees are minorities.

[28] One of EPA's exclusionary zoning cases has been resolved to the satisfaction of the complainant, and another is being litigated with EPA as one of the defendants. Action on the other cases is being held in abeyance until EPA establishes its policy.

[29] The applicability of Title VI to exclusionary zoning has been initially considered by the regional counsel in EPA's Region I (Boston). Specifically, the issue was whether Title VI would prohibit EPA funding of wastewater treatment facilities in Stamford and Simsbury, Conn., since both communities allegedly have prohibitive zoning regulations concerning low- and moderate-income housing. The regional counsel concluded that Title VI did not bar assistance under such circumstances. See Jan. 24, 1972, memorandum, and Feb. 14, 1972, addendum, from Thomas B. Bracken, regional counsel, to John McGlennon, EPA regional Administrator, and others. EPA's Assistant to the Deputy General Counsel agrees that Title VI probably does not apply to exclusionary zoning in the context of the agency's construction grants. Nevertheless, he has concluded that EPA has the legal power and duty to condition money for treatment plants on a community's steps to promote construction of low- and moderate-income housing and thus reduce the effects of exclusionary zoning. His position rests heavily on an interpretation of Title VIII of the Civil Rights Act of 1968. See legal memorandum from William R. Pedresen, Jr., Assistant to the Deputy General Counsel, EPA, to Carol M. Thomas, Director, Office of Civil Rights and Urban Affairs, EPA, June 7, 1972.

tor of the Office of Civil Rights and Urban Affairs reports directly to the EPA Administrator and has overall responsibility for contract compliance, internal women's programs, as well as Title VI enforcement. There are three divisions within the Office—Equal Opportunity, Women's Program, and Minority Economic Development.

The person responsible for day-to-day Title VI matters at the headquarters level is the Chief of the Title VI Compliance Branch, a GS-14. This branch—along with the Contract Compliance and Equal Employment Opportunity Branches, headed by a GS-15 and a GS-14, respectively—comprise the Equal Opportunity Division.[30] Although it can be argued that the Office Director (or perhaps the EPA Administrator) is ultimately responsible for Title VI enforcement, it seems clear that the person charged with providing day-to-day guidance on Title VI matters is relegated to a subordinate position in the organizational hierarchy.

While the Title VI headquarters staff provides technical assistance and guidance to the field civil rights staff, the latter personnel are under the immediate direction and supervision of their respective regional administrators.[31] There is no counterpart in each region to the headquarters Title VI chief. Only one region (Atlanta) has even one person who devotes more than half time to Title VI enforcement.

The current full-time professional civil rights staff numbers 18 in the Washington Office and 20 in the field. Of this total, only three on the headquarters staff and one in the field devote more than half time to Title VI matters.[32] There is, however, a Title VI function in each region, and the total professional man-years spent on Title VI matters in Fiscal Year 1972 was 3.7.[33] (This is expected to increase to 5.5 in Fiscal Year 1973.)

The most discouraging aspect of EPA's Title VI enforcement mechanism is the size of its staff. The present staffing level, especially in the field, is by EPA's own admission totally inadequate. Ideally, EPA sees a need for about 60 full-time professionals, 50 of whom would be in the field, to meet Title VI responsibilities. Presumably, each of these individuals would devote full-time to Title VI matters—a total of 60 man-years as contrasted with the 3.7 in Fiscal Year 1972.

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[30] The Director of this Division is currently on outside assignment, so branch chiefs report directly to the Office Director.

[31] The regional civil rights organization consists of a regional director of the Civil Rights and Urban Affairs Division, who reports directly to the regional administrator. Within the Division is an Office of Equal Opportunity, which has the Title VI function.

[32] The fiscal pattern is similar. EPA's budget for civil rights enforcement at the headquarters level was about $436,000 for Fiscal Year 1972 and is estimated be $583,000 for Fiscal Year 1973, of which $49,000 and $59,000 represent the Title VI portions, respectively—somewhat more than 10 percent. Regional amounts are similar: e.g., $390,000, of which about $31,000 was for Title VI in Fiscal Year 1972.

[33] In five of the 10 regions one staff person is responsible for all civil rights monitoring. Two of the regions (Atlanta and Chicago) have a professional civil rights complement of four. In relative terms, Region IV (Atlanta) seems to be a model vis-a-vis Title VI enforcement. There, one man-year is spent on Title VI, but even this is clearly insufficient.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE (HEW)
HEALTH AND SOCIAL SERVICES (HSS)

I. OVERVIEW

The Health and Social Services Division of HEW's Office for Civil Rights seems to have the necessary experience and tools for effectively monitoring the civil rights compliance of thousands of facilities subject to Title VI. It has developed an assortment of compliance mechanisms.

The Division has completed State-agency reviews in 46 States, and a followup program has been set up to monitor corrective actions. Although the number of onsite reviews conducted by HSS continues to be insufficient, efforts are being made to train State personnel to fill the gap. More needs to be done to increase the effectiveness of State compliance reviews.

New compliance methods are being devised. The Division has entered into a Statement of Common Understanding with the Social Rehabilitation Service for joint compliance efforts; a State-agency reporting system is being developed; and a new format for detecting institutional discrimination is being tested in several States. These programs are promising and should be pursued vigorously by HEW.

If the HSS compliance program is to have maximum impact, the staff must be increased in HEW's Office of General Counsel. Concentrated attention must be given to regions with the greatest number of compliance problems, and continuous efforts must be made toward putting into operation the innovative programs developed to uncover discrimination in health and social services.

II. PROGRAM AND CIVIL RIGHTS RESPONSIBILITIES

HEW has extensive civil rights responsibilities in the field of health and social services. It provides funds to meet such important needs as hospital construction, health-care planning, special health-care problems, vocational rehabilitation, health education, health research, and services for the poor, disabled, and aged. In many of these programs, the ultimate beneficiaries are reached through State and local agencies that administer continuing HEW grants. Examples are aid to families with dependent children, aid to the permanently and totally disabled, and health care services supplied through State health and welfare agencies. In such cases, the responsibility for complying with Title VI is charged to a single State agency in each major program area.[1]

A major exception which nevertheless requires extensive Title VI enforcement is Medicare. In the Medicare program, hospitals and extended care facilities are primary recipients of HEW funds, and these facilities must be checked for Title VI compliance.

III. COMPLIANCE MECHANISMS

A. State Agency Reviews

Since State agencies carry major responsibility for Title VI compliance in health and social services programs, the Health and Social Services Division (HSS) of the Office for Civil Rights (OCR) emphasizes reviews of State agencies to ensure equal services for all people.

Following passage of the Civil Rights Act of 1964, State agencies were required to file Statements of Compliance and to develop Methods of Administration specifying how they would implement Title VI. From 1968 through 1971, approximately 250 State agencies in 46 States were reviewed by HSS to ensure effective performance in accord with the Methods of Administration. In the first half of 1972, however, no State-agency reviews were conducted.[2]

To assist regional civil rights staffs in reviewing State and local agencies and their facilities, a Staff Manual for Compliance Reviews was developed in 1968. The Manual provides comprehensive instructions for assessing compliance and establishing working relationships with State agencies for resolving Title VI problems. The Manual outlines the responsibilities of civil rights and program agency personnel and includes a format for training review teams.[3]

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[1] Typically, these agencies are concerned with vocational rehabilitation, mental hygiene and hospitals, health, welfare, and services for the handicapped.

[2] Reviews are planned for Fiscal Year 1973 in Massachusetts, Tennessee, and Alaska.

[3] Initial review teams included a HSS civil rights specialist, a HEW program representative, and a State agency representative. For the initial State-agency reviews, regional program representatives were required to prepare written summaries of the significant aspects of their programs and areas where discrimination was a distinct possibility. Discussions between program and civil rights representatives used the summaries for background. Civil rights representatives later reviewed the summaries, materials requested from State agencies, and such compliance information as complaints, interviews with minority leaders, and racial and ethnic data.

B. Followup Program

After each State's program is evaluated, steps are taken to improve the State agency's Title VI programs. Followup steps by HSS include:

1. Helping the State agencies develop or improve Methods of Administration.
2. Training State agency personnel to implement Methods of Administration.[4]
3. Continuously monitoring and auditing reviews and other Title VI activities of State agencies.
4. Reviewing on a sample basis, local agencies and service vendors to evaluate the effectiveness of State monitoring.

C. Preapproval Desk Reviews of Health Facilities

When Medicare was enacted, the initial step was clearing health facilities for participation in the program. Medicare compliance activity continues to consist primarily of preapproval screening. As a major part of approval, hospitals and extended care facilities must provide racial data on patients, room occupancy, and staff members to verify that Title VI standards are being met. Once cleared, facilities are considered in compliance until there is a change of ownership or some indication of noncompliance.

D. Compliance Surveys

In 1967 and 1969, OCR conducted a followup Title VI survey of the more than 10,000 hospitals and extended care facilities participating in the Medicare program or receiving other types of Federal financial assistance. Each facility was requested to submit reports covering such areas as admission policies, room assignments, utilization of services and facilities, physician and dentist staff privileges, and training programs for residents, interns, nurses, and paramedical personnel. The information was compared with that submitted by the facilities in their applications for participation.

Information from areas where legal racial discrimination formerly existed was compared with census data to contrast the number of actual beneficiaries with the number of potential beneficiaries. The statistics showed greater minority utilization of hospitals but low minority utilization of extended care facilities. Priority was given, therefore, to reviewing extended care facilities.

E. Onsite Reviews

Regional offices determine which facilities will get onsite reviews. In general, facilities selected for onsite review are those whose applications carried a suspicion of discrimination, those with a history of discrimination, and those which have been the subjects of Title VI complaints. These reviews are in addition to those conducted by State agencies.

In the first three quarters of Fiscal Year 1972, HSS conducted approximately 450 onsite reviews. Included in the 450 are the reviews conducted as part of the monitoring of State agencies.[5]

Other reviews are conducted as part of special Title VI studies either on an area basis or by preselection of types of facilities. Examples of such studies are: examination of the impact of language barriers on the delivery of services to non-English speaking minority groups; review of the training facilities used in vocational rehabilitation; and assessment of the utilization by minorities of hospitals in a specific geographical area.

HEW does not have a comprehensive reporting system whereby the number of reviews conducted by State agencies can be determined. In Fiscal Year 1972, a sampling of 10 States produced mixed results. Revisions in the current reporting system, designed to produce more accurate records, are being made for submission to the Office of Management and Budget for approval.

The several HSS reports on onsite reviews and complaint investigations seen by this Commission were comprehensive. The reviews strongly underscore, however, the need for continuous monitoring and spot-checking of State-agency compliance activities. In most cases studied, the State agency was given an opportunity to act before the Federal review, but the State agency either failed to find noncompliance or failed to make a thorough investigation.[6]

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[4] During Fiscal Year 1972, 500 State agency employees were trained and there are plans to train another 500 in Fiscal Year 1973. Although HSS has not devised a way to measure the effectiveness of the training, regional coordinators believe it has improved compliance activities in some of the participating States.

[5] These reviews involved agencies, installations, and/or facilities participating in such programs as: Medicare and Medicaid, Old Age Assistance, Aid to Families with Dependent Children, Aid to the Blind, Rehabilitation, Mental Health and Retardation, and Community and Comprehensive Health Care and Planning.

[6] For example, one complaint involved segregated waiting rooms and whites being served ahead of nonwhites rather than on a first-come basis. Two Alabama compliance officers reported that they observed no evidence of discrimination. A month after receiving the report of the State officials, HSS scheduled a joint review with State personnel. The State officials, however, subsequently withdrew from the team. HSS staff found that the partition between the black and white waiting rooms had been taken down, but the doctor stated that if he were "forced to utilize his entrances and waiting rooms (on a nondiscriminatory basis) so should all the other physicians receiving Federal financial assistance and maintaining practices in that county." Despite removal of the partition, HSS personnel found that as long as both doors were kept open white patients would probably continue to sit in one waiting room and blacks in the other because of "custom." Recommendations were made for corrective action to be taken by the doctor. Implementation was later checked by a joint compliance team, and a review of other doctors' facilities in that county was undertaken.

Furthermore, review of the HEW reports indicate that often too much time is taken to resolve a complaint or negotiate voluntary compliance.

F. Enforcement

During Fiscal Year 1972, six recipients were determined to be in noncompliance by HSS.[7] Five were referred to the Office of General Counsel for review and determination of enforcement action. Staff shortages in the Office of General Counsel have caused serious enforcement delays when voluntary compliance cannot be achieved. As of June 1972, there were only 19 lawyers in the Civil Rights Division of HEW's Office of General Counsel. HSS shares with the Contract Compliance Division the services of only four of those attorneys. Several health-related complaints sent to OCR by this Commission have been awaiting a determination by the Office of General Counsel for a considerable length of time.

G. Experimental Review Format

OCR's Office of Special Concerns, in cooperation with the Social and Rehabilitation Service (SRS) is developing a review format for discerning institutional discrimination. The reviews will be used, for example, to assess problems resulting from limited knowledge of English. Census data relating to the language characteristics of an area, and/or to the racial and ethnic characteristics of the area's poverty population, will be contrasted with data from the files of recipients and from their responses to HEW questionnaires. OCR then will be able to determine whether minority individuals frequently are excluded from public assistance or receive inferior treatment and service.

The first step in developing the format centers on efforts to discern discrimination because of language and cultural barriers. This part of the format was initially utilized in a review of the Sonoma County, Calif., Department of Social Services in June 1972. It was found that the recipient had failed to take into consideration the limited knowledge of English among the county's Spanish surnamed population. It was recommended that the bilingual staff be increased.

A related study in the Los Angeles area found inequitable funding in various parts of the metropolitan area which resulted in white beneficiaries in West Los Angeles receiving more service than black beneficiaries in Watts. This resulted, in part, from the fact that no system had been developed for allocating funds according to client load and need.

OCR plans to use this format in State agency reviews in Michigan, where there have been several complaints, and Massachusetts. If these State-level efforts are successful, the format may eventually replace State-agency reviews.

In addition to these plans to contrast both the number of potential and actual clients and to gauge the services provided, there are plans to look at programmatic facets of both welfare and health. Attention would be given to office location, staff, outreach activities, and the money allocated to various geographic areas for the same programs. HEW anticipates looking eventually at the interrelationship of programs in the health and social services fields. These plans appear to be most worthwhile and their implementation should have priority.

IV. ADVISORY BOARDS

Title VI is considered applicable to the selection and tenure of members of the planning, advisory, and governing bodies of HEW recipients. Two common types of boards and committees are:

1. State advisory committees established pursuant to HEW's formula legislation.
2. Advisory committees and boards for individual projects, established under both formula and project-grant legislation.

The minority group membership of advisory and governing boards is reviewed and made a part of the assessment of reports on State compliance status. Efforts to improve State-agency compliance in this regard are included in the work plans of HSS State coordinators. To date, no statistics have been compiled on the racial and ethnic composition of these committees. Nor have comprehensive studies been made to measure the influence of these boards on the general policies or actions of the State agencies.

V. ORGANIZATION AND STAFFING

A. Structure

HSS's structure appears to be effective for monitoring more than 15,000 facilities and agencies subject to Title VI. HSS is one of four divisions in the Office for Civil Rights. Others are Contract Compliance, Elementary and Secondary Education, and Higher Education. The HSS Director reports to the OCR Director through OCR's Deputy Director. The Director's immediate staff is composed of a Deputy Director; two operations officers, one each for the Northern and Southern regions; and three regional coordinators.

The coordinators are responsible for continuously assessing operations in the regions. This is accomplished primarily through personal contact and frequent field visits. During the course of a visit, a regional coordinator discusses current operations with the regional civil rights director, the health and social services chief, and the civil rights specialist who act as State coordinators. Analyses of ongoing State-agency reviews, evaluations of complaint investigations, and discussions of each State agency are part of the visit.

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[7] HSS has found many recipients with compliance problems, but only those that cannot be resolved by regional staff are forwarded to Washington as being in noncompliance.

This process is supplemented by a Management Reporting System which regularly provides information and data on developments and progress in each region. This information is reviewed by regional coordinators and the HSS Director.

Operational responsibility for Title VI enforcement rests with the 10 regional offices. In each region, the HSS chiefs and civil rights specialists formulate and conduct monitoring programs for the State agencies and for health facilities receiving Federal assistance. A civil rights specialist is designated State coordinator for each State in the region. The specialist is responsible for assessing the State's Title VI compliance and developing, on a semiannual basis, work plans for helping the State agency correct any phase of weak compliance.

B. Staffing

The Division's staffing pattern appears reasonable. Fifty-five professionals devote full time to Title VI. This does not include four professional vacancies—three of which are in the Chicago and Dallas offices, where additional staff is needed because of the quantity of Title VI problems, although it presently has the largest staff in the Division. The HSS Director hopes to place several of the positions requested in the Fiscal Year 1973 budget in the Atlanta office.

C. Training

New personnel in HSS headquarters are given three months of experience in several regional offices to familiarize them with field problems, workload, and operations. Training for new regional staff members is primarily on-the-job; i.e., they are placed under direct supervision of a more experienced civil rights specialist. All new personnel attend a national meeting, at which they receive basic instructions on assistance programs and on program guidelines and requirements.

A major problem with on-the-job training is that in periods of rapid staff turnover there often are more new staff members than experienced ones. This has been a problem in, for example, the Atlanta region. Where this occurs, enforcement is often tenuous until the staff can gain experience.

D. Program Coordination

HSS works with each of HEW's operating health and social service agencies to enhance minority participation in the agencies' programs. A Statement of Common Understanding has been developed with the Social and Rehabilitation Service (SRS) as a framework for activity with that agency.* The Division has cooperated in developing SRS's operational planning system to make sure that specific items affecting minority groups will be included.

The Statement presents, in clear language, OCR's responsibilities and affirmative steps SRS should take to remove barriers excluding people from participation in programs because of race, color, national origin, ethnic and cultural background, geographic location, or any other discriminatory factor. HSS is working on a similar agreement with a second program agency, the Health Services and Mental Health Administration. These are important steps in the right direction and should be pursued aggressively.

Although discrimination by some recipients has been found by the HSS staff, formal determinations of noncompliance often are delayed by a shortage of staff in the Office of General Counsel.

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* Offices with responsibility for carrying out the agreement were designated, and the effective date was set as July 1, 1971. Objectives and joint projects for Fiscal Year 1972 were developed, along with schedules for implementation.

DEPARTMENT OF THE INTERIOR (DOI)

I. OVERVIEW

The Department of the Interior has not fully assumed its responsibility for the enforcement of Title VI in connection with its programs for outdoor recreation and utilization of natural resources. It still has not taken, for example, the rudimentary step of determining the possible impact of civil rights laws on many of its programs. Although adequate onsite compliance reviews have been conducted in 25 States with regard to one important program, the agency has failed to meet the more important task of developing a comprehensive enforcement program.

Despite the increased size of its civil rights staff, the Department still lacks sufficient administrative regulations, civil rights training, and coordination between civil rights and program officials. Recipients remain inadequately notified of what constitutes full compliance with Title VI seven years after the enactment of the statute. It is incumbent upon the Office of Management and Budget, the Department of Justice, and senior DOI officials to take prompt action to correct DOI's poor record of Title VI enforcement.

II. CIVIL RIGHTS RESPONSIBILITIES

The Department of the Interior has a number of programs covered by Title VI, although only a few have obvious Title VI significance. The most important of these is operated by the Bureau of Outdoor Recreation, which provides funds to the States and through the States, to localities for the study and development of outdoor recreation facilities. Less significant programs are in the Bureaus of Reclamation, Land Management, Sport Fisheries and Wildlife, and the National Park Service.

Although the Department's grant programs have been covered by Title VI since 1965, several steps essential to planning and development of a compliance enforcement program have not been taken. Little effort has been made to identify the full extent of Title VI coverage to agency programs [1] or to identify likely types of discrimination in all program areas.

III. COMPLIANCE MECHANISMS

A. Administrative Procedures

In addition to failing to take the preliminary steps toward a compliance program, the Department of the Interior has not adopted administrative procedures necessary for a compliance program. It has not developed:

1. Compliance guidelines or criteria which would place the Department's 7,946 recipients on clear notice of the requirements to be met.
2. Complaint procedures which would provide instructions on investigation techniques and which would inform the public on how to file a complaint about discriminatory practices by a recipient of DOI assistance.
3. Instructions concerning what equal opportunity information should be requested and reviewed by program officials at the application stage.
4. A reporting system requiring recipients to file information on utilization of facilities.[2] This system would identify the beneficiaries of programs by race and ethnicity, thereby enabling DOI officials to determine if minorities are receiving benefits or services on an equitable basis.
5. Grant program reviews to determine if program regulations restrict accessibility and participation of minority groups.

It is recognized by DOI staff that upgrading Title VI enforcement is contingent on the issuance of the administrative procedures listed above in the form of a chapter of "Nondiscrimination in Federal Assistance Programs" in the Department's Administrative Manual and in the development of written Title VI standards for compliance. Yet the preparation and approval of these documents are taking an inordinate amount of time.[3]

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[1] For an example of the type of analysis which DOI officials should have undertaken, see letter from Jeffrey M. Miller, Director, Office of Federal Civil Rights Evaluation, U.S. Commission on Civil Rights, to Donald G. Waldon, Principal Budget Examiner, Natural Resources Programs Division, Office of Management and Budget, June 14, 1972. The letter discusses possible civil rights obligations of DOI's Bureau of Reclamation.

[2] The compliance reporting system used by the program bureaus prior to centralization of Title VI responsibilities was discarded as ineffective. It consisted merely of a series of "yes-no" questions and collected no objective, verifiable information.

B. Compliance Reviews

In Fiscal Year 1972 the Title VI enforcement program was limited to recipients of grants from the Land and Water Conservation Fund, administered by the Bureau of Outdoor Recreation. Compliance reviews were conducted in 25 States, and 330 onsite reviews were performed. None of the recipients was found to be in noncompliance. All the recipients reviewed were asked, however, to take some affirmative steps to acquaint minorities with the programs, to involve minorities in recreation planning and development, and to increase minority employment.

Despite the fact that these shortcomings were found repeatedly, no instructions or administrative regulations which would require similar affirmative steps by all grantees have been formulated. Although recommendations for improved Title VI implementation were made to all recipients reviewed, specific time limits for action were not given and followup reviews have not been planned. Moreover, compliance reviews have been conducted without relationship to a larger plan of action.[5]

DOI's Office for Equal Opportunity plans to review seven more States during Fiscal Year 1973. Continuing compliance reviews without clearly enunciating standards of compliance to recipients seems an unwise management decision. Compliance reviews are a means of determining how well a program is working and are not an end in themselves.

Compliance review reports seen by this Commission have been fairly comprehensive. However, several important items were omitted in the onsite reviews. These include:

1. An analysis of whether there was equitable funding between the rural and urban areas and between various sections within metropolitan areas.
2. Utilization of second-language materials in areas of national origin concentrations.
3. Review of location criteria utilized, i.e., the site-selection process for recreation facilities.[6]
4. Review of State Plans to determine if adequate consideration is given to planning facilities for utilization by people of all incomes and educational backgrounds.
5. Review of priorities established by local authorities to determine if recreational facilities are planned in accordance with the needs of all the area's residents.
6. Review of a recreational authority's outreach efforts to increase minority utilization of all facilities where racial discrimination formerly prevailed.[7]

IV. ORGANIZATION

Although the civil rights office recognizes a need for additional staff, it has not taken advantage of available resources. For example, no attempts have been made to involve program and State officials in ensuring an acceptable standard of compliance with Title VI. Efforts have not been made to require that civil rights considerations be included in all phases of DOI programs. Further, civil rights training for Federal and State officials involved in the grant process has not been developed. Nor have these officials participated in onsite reviews to familiarize themselves with civil rights problems.

The Office for Equal Opportunity has not made maximum use of its present Title VI staff. Six full-time professionals work on Title VI enforcement, and all are located in the headquarters Office for Equal Opportunity.[8] The priority assignment of that staff, after becoming familiar with programs and compliance mechanisms, should have been developing a Title VI program with priorities, goals, administrative procedures, and regulations. This has not been forthcoming.

Although the Office of Equal Opportunity attributes this deficiency to lack of manpower, the present staffing level—which includes two GS-14 positions in addition to the assistant director—appears to be that DOI's Title VI program has been characterized by a lack of urgency, poor planning, and underutilization of manpower resources.

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[3] Work began on them when DOI's civil rights functions were centralized in April 1971. The need for the procedures was discussed with Interior officials before that date, however.

[4] DOI still has not determined whether it will cover employment practices of its grant recipients by statutory authority independent of Title VI.

[5] For example, DOI states that if advisory councils receive Federal assistance or serve as a conduit for it, then Title VI applies and there can be no discrimination in the selection of members. It has made no effort, however, to identify the advisory councils or State recreation commissions that are so covered. This matter is not covered, therefore, in the compliance review process.

[6] The location of a park or facility often determines who will use it.

[7] In areas where dual recreational facilities were operated, it is probably necessary to inform the minority community that it is welcome to use all facilities.

[8] The assistant director of Title VI, a GS-15, was recently hired. He, along with several other staff members, has had minimum experience in developing a Title VI compliance program.

DEPARTMENT OF JUSTICE LAW ENFORCEMENT ASSISTANCE ADMINISTRATION (LEAA)[1]

I. OVERVIEW

LEAA's civil rights compliance program shows signs of improvement. A compliance report form covering law enforcement agencies has been distributed, and a tentative system for analyzing the results has been established. Similar report forms covering correctional institutions and court systems, however, still have not been put into final shape.

LEAA still does not appear to deal with complaints in an expeditious manner and has not performed any preaward reviews, but the agency has finally undertaken onsite postaward reviews dealing with both employment and Title VI matters. The adequacy of these reviews and of the complaint investigations is unknown because LEAA generally will not make reports on complaint investigations or compliance reviews available to this Commission.

LEAA has proposed guidelines relating to minority presentation on planning bodies and to height requirements used in employment of peace officers. The guidelines are unquestionably needed. Regarding employment practices of recipients, LEAA recognizes the need for imposing affirmative action requirements, but only on a limited basis. LEAA's staff continues to take the position that the prohibition against quotas in the LEAA legislation bars the agency from requiring recipients to establish goals and timetables—an interpretation this Commission feels is unwarranted.

LEAA civil rights staffing is inadequate. Even progressive staffing increases of eight professionals in Fiscal Years 1973, 1974, and 1975, as suggested by LEAA, would fall below what is needed, especially given the centralized nature of the enforcement operation. The fact that many compliance responsibilities will be delegated to State Planning Agencies (SPAs) and other recipient groups makes this no less so. Simply doing an adequate job of monitoring the compliance activities of these groups will require more substantial civil rights staffing.

II. CIVIL RIGHTS RESPONSIBILITIES

This report considers LEAA's civil rights responsibilities vis-á-vis both Title VI of the 1964 Civil Rights Act and the Department of Justice's equal employment opportunity (EEO) regulations.[2] The EEO regulations require that recipients of LEAA financial assistance not discriminate in "employment practices"—a term broadly construed.[3]

Compared to EEO matters, Title VI issues have proved quite difficult for LEAA staff. The requirement, for example, that law enforcement agencies provide "services" on a nondiscriminatory basis is typically measured in allocation of manpower and time taken to answer calls. To illustrate, if assignment of police officers in a city caused identifiable minority concentrations to receive less than an equitable share of the manpower, this should be a presumptive Title VI violation.[4] Another example would be a clear pattern of significantly slower police response to calls from minority areas.[5]

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[1] It should be noted at the beginning that this evaluation of LEAA's civil rights operation is severely limited by LEAA's refusal to make copies of compliance review or complaint investigation reports available to Commission staff. LEAA's reason stems from assurances of confidentiality given to recipient agencies when reviews or investigations are undertaken. While LEAA is receptive to sharing details on its methodology, the staff will not divulge specific findings. Availability of information regarding compliance methodologies is certainly essential. It is more critical, however, to evaluate actual performace in order for this Commission to discharge its statutory mandate to "appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution." Moreover, it is difficult to reconcile LEAA's assurances to law enforcement agencies which are not required, with the legislative mandate that "Federal agencies shall cooperate fully with the Commission to the end that it may effectively carry out its functions and duties."

[2] In 1970, LEAA issued regulations prohibiting discrimination in recipients' employment practices. The regulations are based on statutory authority other than Title VI. See 28 C.F.R. 42.201, *et seq.*, Subpart D. It should be noted that the Equal Employment Opportunity Act of 1972 (Public Law 92-261) amended Title VII of the Civil Rights Act of 1964 to make it applicable to State and local governmental agencies.

[3] "Employment practices" encompasses "all practices relating to the screening, recruitment, selection appointment, promotion, demotion, and assignment of personnel, and includes advertising, hiring, assignments, classification, layoff, and termination, upgrading, transfer, leave practices, rates of pay, fringe benefits, or other forms of pay or credit for services rendered and use of facilities" 28 C.F.R. 42.202(b).

[4] Undoubtedly there are many factors, such as *prior* incidence of crime, that bear on allocation of manpower. Nevertheless, assignment patterns which have a discriminatory effect would almost certainly become evident if a comprehensive analysis were made. Suppose a city with a 30 percent minority population concentrated in three of the city's ten precincts. If only 5 percent of police manpower were assigned to the three precincts, this would clearly establish a *prima facie* case of discrimination. What is needed is a sophisticated method of identifying instances where discrimination is considerably less overt than this hypothetical situation.

[5] See, e.g., LEAA's draft Compliance Review Manual at C6.

LEAA needs to strengthen its Title VI enforcement program—first by exhaustively delineating what constitutes noncompliance and then by developing methods for measuring noncompliance. The question of LEAA's responsibility for analyzing a grantee's expenditure of funds was recently put to LEAA staff members. Their initial reaction was that a recipient's decisions about allocating resources (e.g., choosing between purchasing hardware and funding socially innovative programs aimed at preventing crime rather than reacting to it) are not readily susceptible to civil rights evaluation. After some thought, however, LEAA personnel did envision some situations in which allocation of funds could be assessed from a civil rights perspective.[6]

III. COMPLIANCE MECHANISMS

LEAA evidently will place much of the responsibility for developing the framework for a compliance program on its State planning agencies. As part of their applications for 1973 planning funds, SPAs will be required to demonstrate that they have established a comprehensive civil rights compliance program at the State level.[7] Operational details of this decentralized compliance system, however, are not entirely clear, despite this description by LEAA:

> . . . LEAA is developing a technical assistance capability at the Federal level which will be shared with State officials, as each State begins to develop comprehensive civil rights enforcement programs. In this regard, LEAA is encouraging the SPAs and Regional Councils implementing the LEAA program to cooperate with State and local human rights agencies in establishing an effective civil rights enforcement effort at the State and local level.
>
> Under this approach, the LEAA Office of Civil Rights Compliance would maintain close monitoring of the manner in which each State is addressing its compliance responsibilities, and lend appropriate technical assistance to the SPA in developing its compliance capability. Using this approach, LEAA would assert jurisdiction as a Federal matter only where there would be an apparent inability or unwillingness to resolve the matter at the State level.[8]

A. Reporting System

LEAA's compliance report form covering State, city, and county law enforcement agencies was put in final status in November 1971 but was not mailed to the recipients until June 1972.[9] The form, which deals almost exclusively with employment matters,[10] was sent to approximately 7,500 police agencies [11] for filing by August 1, 1972. As of that date, about one-third of the agencies had submitted the completed form.[12] The data processing system devised for analyzing the information reportedly identified the delinquent agencies as of August 31, 1972.[13]

By October 1972, it is expected, 75 to 80 percent of the agencies will have responded. SPAs will be responsible for getting information from nonreporting agencies. No decision has been made about what action will be taken against agencies which simply refuse to file.

LEAA has contracted with a minority consulting firm to process the data, develop a data base, and assist LEAA in determining which agencies will get priority attention. Employment data from recipient agencies will be matched with data on the racial and ethnic composition of States, counties, and cities they serve "so as to indicate those recipient agencies with the greatest statistical disparities or exceptions between their law enforcement staff and population statistics."

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[6] One LEAA staff person expressed the belief that a law enforcement agency which materially upgraded its communications system in predominantly majority areas without doing the same in predominantly minority areas conceivably would be violating Title V[illegible]er issue discussed was "status" crimes, such as gambling and prostit[illegible] one views enforcement of applicable statutes as a service provided by a [illegible] enforcement agency, and if the laws are only enforced against a particular racial or ethnic gorup, then Title VI has been violated. Moreover, it can be argued that where minorities are arrested in disproportionate numbers, the recipient agency should be made to account for the disparate treatment. For the year ending Dec. 31, 1970, for example, almost 95 percent of the people arrested for gambling in Dallas were black. Yet, according to the 1970 census, blacks constitute only 25 percent of Dallas' population. It should be incumbent upon the recipient agency to explain this arrest pattern.

[7] See LEAA's proposed assurance of compliance covering Title VI and the regulations. If the assurance is adopted, it will require each SPA to assign civil rights responsibilities to specific staff members; train SPA staff; apprise subgrantees and contractors of civil rights requirements and secure relevant assurances from them; review compliance with the assurances, using appropriate racial and ethnic data; require subgrantees and contractors to maintain records necessary to establish compliance; apprise beneficiaries of nondiscrimination requirements; and establish complaint procedures and inform the public of the the details.

[8] Letter from David L. Norman, Assistant Attorney General, Civil Rights Division, Department of Justice, to the Reverend Theodore M. Hesburgh, Chairman, U.S. Commission on Civil Rights, Sept. 5, 1972. Although the proposed assurance requires each SPA to describe how the above requirements (*supra* note 7) will be implemented (which will form the basis of the anticipated compliance program), judgment on the adequacy of these plans must be reserved until the Commission has the opportunity to review what the States submit to LEAA.

[9] According to LEAA, a printing delay prevented an earlier mailing. In any event, LEAA is considerably behind schedule in implementing this aspect of its compliance program. Originally, it was anticipated that the responses would be analyzed by July 1972.

[10] LEAA indicated that incorporating Title VI questions which would conform to the reports format (i.e., susceptible to statistical response) proved difficult. It is expected, however, that Title VI issues generally relating to services (discussed *infra*) will be delt with in compliance reviews. Furthermore, the compliance report form for correctional agencies and court systems will contain numerous Title VI questions. For example, racial and ethnic data on enrollment in specific prisoner rehabilitation programs will be obtained.

[11] This is out of approximately 13,000 "eligible" police agencies. The remaining 5,500 currently are not receiving LEAA funds. Earlier (April 1971) Department of Justice correspondence with this Commission indicated that there are 14,346 police agencies in States, cities, and counties with a 1960 population of 1,000 or more. There are an estimated 25,000 others in townships or villages of under 1,000 population. Apparently, no forms were mailed to the latter category, contrary to a previous report.

[12] Interview with LEAA staff and consultants, Aug. 10, 1972. This information conflicts with other information which indicated that as of mid-July, LEAA had received about half of the response. (See Norman letter *supra* note 8.)

[13] The high delinquency rate is partly attributable to the delay in consolidating information in five or six State Planning Agencies which are doing all mailing to State, local, and county agencies within their jurisdiction.

There is a considerable amount of information that could be analyzed but is not yet available. This information may eventually be obtained through the Census Bureau. At this juncture, however, LEAA is interested in the most fundamental comparison—staff versus population statistics—necessary to ascertain possible noncompliance.

The LEAA contractor has developed some tentative criteria to determine priorities for selecting agencies to review. These criteria include agency size, racial mix, location, and percentage of minorities in the eligible age group. It is difficult to say what these analytic procedures will yield, but LEAA has indicated that:

> State planning agencies and local law enforcement agencies will be notified if there is a statistical indication of an underutilization of minorities and will be requested to provide additional compliance information as may be necessary. As staff becomes available, onsite compliance reviews will be conducted on a priority basis for those recipients whose statistical tabulations and additional submissions point to the need for further evaluation efforts.

Again, it is impossible to assess the effectiveness of this system until there is some indication of how it is being implemented. Yet such an assessment can be made only if LEAA makes the completed report forms available to the public, or at least to other agencies [14] —a decision that has not yet been made.

As the Commission has noted, this report form does not cover most of LEAA's recipients; e.g., correctional institutions, court systems. LEAA at one time had expected to have a form pertaining to these recipients prepared and distributed by mid-1972. LEAA now indicates that it is still developing a report form to cover detention, correctional, and community-based facilities and probation and parole agencies. Development of a reporting system for courts has not yet begun, but LEAA estimates that both systems will be in use no later than July 1973. The delays have been caused in part by coordination problems between LEAA and the Equal Employment Opportunity Commission (EEOC).

B. Preapproval Reviews

LEAA has conducted preaward reviews. The Administrator once indicated that undertaking such reviews is doubtful because of the block-grant nature of LEAA's assistance program. At present, preapproval reviews are being planned for certain discretionary grants, which LEAA allocates for special projects. LEAA thus far has not decided what will determine selection of recipients for review, but it likely that the single most important criterion will be the size of the grant.[15] The scope of these reviews has also not been determined.

The LEAA staff maintains that it would be extremely difficult to conduct a preapproval review of a block grant. Each State planning agency is responsible for an annual comprehensive law enforcement plan.[16] When the plan is approved by LEAA, the State is awarded an "action" grant. This grant typically provides 75 percent of the funds required to implement the programs in the annual plan. This Commission has suggested that preapproval reviews consider, among other things, the anticipated civil rights impact of the State's plan. This might involve an analysis of the purposes for which the funds would be expended and how the funds would be allocated to local governments.[17] It would be necessary, therefore, to examine these plans in terms of whether the types of proposed programs or the projected allocation of monies would have a discriminatory impact, in terms of race or ethnicity, on the intended beneficiaries.

LEAA staff members have noted, however, that exact allocations to local governments cannot be spelled out in advance in the State comprehensive plans. Because LEAA's program is predicated on the block-grant concept of revenue sharing, there is ostensibly no mechanism available which might permit LEAA to determine whether projected programs would deny services to a particular segment of the intended beneficiaries.

It would seem that some method could be devised for preapproval review of block grant recipients and subgrantees. This might take the form of reviews by SPAs of applications by local governments, from a civil rights perspective.[18] At a minimum, preaward reviews should involve a check on the employment practices of prospective recipients and subgrantees. Once LEAA's compliance-reporting system is fully operative, the agency will have the capacity to institute such reviews.[19] Also, when LEAA issues its Title VI guidelines regarding membership on SPA boards (discussed *infra*), another matter would be available for scrutiny in a preapproval review.

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[14] LEAA reports that the Equal Employment Opportunity Commission already has been contacted regarding future coordination in monitoring recipients over which both LEAA and EEOC have jurisdiction.

[15] It is expected that the "larger" discretionary grant recipients will be subjected to preaward reviews and that the dollar amount will be fixed after an analysis of last year's awards.

[16] LEAA awards planning grants to SPAs. They are based on the State population and may not exceed 90 percent of the cost of operating the SPAs.

Development of a preapproval system is not an easy task. It will take, no doubt, a sizable investment of man-power to design a workable system. The difficulty of the task, however, does not alter the need to do it. LEAA already has recognized that discretionary grants can be subjected to preaward review. Some thought should be given to determining under what circumstances preaward reviews might be feasible for block grants.

C. Postaward Reviews

Eight "impact" cities[20] —Newark, Baltimore. Atlanta, Cleveland, Dallas, St. Louis, Denver, and Portland—are subjects of LEAA's first comprehensive, on-site compliance reviews. These reviews will focus on employment and Title VI matters in the police departments in these major cities. Thus far, reviews have been completed in Dallas and St. Louis.[21] LEAA believes about 100 man-days are required to conduct a compliance review in a typical large police department.[22] Because of the volume of work, personnel other than LEAA civil rights staff often assist.[23]

Principal matters reviewed are selection and recruitment, assignment, promotion, internal discipline, and services. Fundamentally, the review focuses on employment practices and operational procedures. Limited attention is paid to Title VI matters.[24]

Although LEAA has supplied this Commission a copy of its proposed Compliance Review Manual, the agency has refused the Commission access to actual review reports.[25] Some observations may be made about the Manual itself, such as the need for refining the questions relating to Title VI. However, any evaluation of LEAA's compliance program which does not consider the review reports themselves is somewhat academic. The one report which LEAA did make available to the Commission, discussed in the next section, has been touted as the best example of a comprehensive analysis of a major metropolitan police department. Yet, this report deals only with personnel practices. Title VI issues are noticeably lacking.[26]

D. Complaint Investigations [27]

During Fiscal Year 1972, LEAA received 42 discrimination complaints. Fifteen have been closed—two because LEAA provided no financial assistance to the party against whom the complaint was made.[28] It is noteworthy that in the case of another complaint, in which the party complained against had not received LEAA assistance, a "preaward investigation [of unspecified scope is] pending for possible future application."[29] If the party subsequently applies for assistance, LEAA would conduct a review before disbursing any funds.[30]

In eight of the 42 cases, investigations have been completed but the status is "open." Five of these com-

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[17] "During Fiscal Year 1971, the States were required by law to pass on at least 75 percent of their block action grants to local governments. Beginning July 1, 1972, States will pass on the percentage of action funds equal to the total local government expenditures in relationship to the total State and local government expenditures for law enforcement during the preceding fiscal year." *Third Annual Report of the LEAA, Fiscal Year 1971* at 4.

[18] Section 304 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3734) stipulates that:

> SPAs shall receive applications for financial assistance from units of general local government and combinations of such units. When a SPA determines that such an application is in accordance with the purpose stated in section 301 and is in compliance with any existing statewide comprehensive law enforcement plan, the SPA is authorized to disburse funds to the applicant.

A preaward civil rights review could be done in conjunction with the program review, which is aimed at establishing compliance with the above requirements. Such a civil rights review might reveal that approval of a local government's application would result in an inequitable distribution of services that has a discriminatory impact. For example, an application for assistance to upgrade a communications system only in districts where whites predominantly reside is the type of disparate impact that might be revealed by a preaward review. Similarly, before a grant application for upgrading local correctional facilities is approved, a review would be conducted to establish whether the facilities are segregated. This means, of course, that applicants would be required to submit additional racial and ethnic data (e.g., maps indicating racial concentrations) to demonstrate how, from a civil rights perspective, the services would reach all the intended beneficiaries.

[19] This would present a problem if an applicant had not previously received LEAA assistance and therefore had not filed a compliance report form. An applicant ordinarily is not required to file a compliance report form until funds have been disbursed to it.

[20] These are cities which receive substantial discretionary and research grants to meet problems which LEAA has determined to be of the highest priority. See LEAA publication, *High Impact Anti-Crime Program* (undated).

[21] A review of the Cleveland Police Department is currently underway. It was anticipated that all eight of the impact cities would be reviewed by Dec. 15, 1972.

[22] Norman letter, *supra* note 8. The agency also notes that "smaller or better computerized departments will take correspondingly less time."

[23] This includes systems analysts and audit staff. Furthermore, as discussed *infra*, the survey team which prepared the final Chicago report was comprised entirely of outside consultants.

[24] LEAA's draft Complaince Review Manual requires that the reviewer determine the acutal use of the grantee's service by race. This would have particular relevance in terms of juvenile delinquency prevention or methadone maintenance, but limited applicability to law enforcement. In the latter case, analysis of Title VI matters involves such items as response rates to calls for assistance from minority and majority areas; number of arrests by race and national origin for drunkenness, disorderly conduct, loitering, and prostitution; and the number of citizens, by race and ethnicity, against whom a policeman used force.

[25] *Supra* note 1.

[26] It should be noted that although no followup reviews have been performed, LEAA staff members expect to monitor continually the progress achieved by recipients subjected to a review.

[27] See LEAA's proposed hearing and appeal procedure at 37 F.R. 16401 (Aug. 12, 1972).

[28] One of these complaints was referred, however, to the Civil Rights Division of the Department of Justice for unspecified reasons.

[29] LEAA Complaint No. 72-C-01, received in July 1971.

[30] LEAA's headquarters staff has indicated that when this occurs, the appropriate LEAA regional office and SPA are notified that if they receive an application from the complained-against party, they should notify LEAA's Office of Civil Rights Compliance, which would determine whether an investigation is warranted. Apparently, whether to conduct a preaward investigation is a matter of judgment. This presumably accounts for the closed status of one complaint (No. 72-C-05). The party complained against had received no LEAA subsidy, and yet the complaint was not referred to the Department's Civil Rights Division.

plaints have been received in either August or September 1971. Yet, as of September 1972, the investigator still was preparing recommendations for resolving the cases. In two other complaints, received in October 1971 and January 1972, the investigator's recommendations were being reviewed by the Director of LEAA's Office of Civil Rights Compliance.[31]

Of the remaining 19 complaints, 17 are under investigation.[32] Five of these complaints were received before March 1972, eight in either March or April 1972, and only four after May 1972.

In terms of promptness in resolving complaints, LEAA's performance has clearly been inadequate. Notwithstanding the complexity of some of the cases and the fact that some of the complaints—e.g. those relating to police brutality and correctional institutions—are initially processed by the Department's Civil Rights Division, LEAA's record in disposing of these matters needs to be materially improved.

The adequacy of LEAA's complaint investigations cannot be appraised since—as with compliance review reports—copies of complaint investigations are generally not available. One exception is the investigative report on personnel practices of the Chicago Police Department.[33] This document was made available by agreement of the parties. It is the product of a complaint formally lodged by the Afro-American Patrolmen's League in June 1971. The final report, however, was not issued by the survey team of non-LEAA personnel until August 1972.[34]

While the report seems extremely comprehensive, it is doubtful that all complaints are afforded such treatment. If, on the other hand, it indicates the quality of LEAA's complaint investigations, it is a notable achievement. This Commission's staff will have to reserve judgment until such time as LEAA makes additional investigative reports available.[35]

IV. ENFORCEMENT PROCEEDINGS

LEAA reported no findings of noncompliance. Currently it is involved, as funding agency, in a lawsuit against Mississippi's Parchman Penitentiary. The suit was filed by the Lawyers' Committee for Civil Rights Under law, and the Department of Justice has intervened on the side of the plaintiff.

It has been noted previously that while a suit was pending against an LEAA recipient, the agency had continued to fund the defendant. This matter is currently under advisement. In the Parchman case, the Mississippi SPA has provided assurance that it would not fund the defendant during the litigation, with the exception of two programs in which people would lose jobs if assistance were terminated.

LEAA officials have repeatedly indicated a preference for achieving compliance through the courts rather than through administrative sanctions. It should be noted, however, that the agency has never initiated a suit and has intervened in only three private suits. While judicial preference is still the policy, there are some indications that administrative sanctions might be imposed under certain, albeit rare, circumstances.[36]

V. MISCELLANEOUS

A. Minority Representation on SPA Supervisory Boards and Regional Planning Units[37]

LEAA has issued a proposed guideline relating to the Title VI implications of minority representation on SPA supervisory boards and Regional Planning Units. The proposed guideline stipulates that,

> Where the proportion of members of a particular minority group on any such supervisory board is substantially less than the proportion of members of that particular minority group in the general population of the State or region, a violation of Title VI . . . shall be presumed. This means that the previously proposed remedy for bodies will be substantially strengthened. The previous disproportionately low minority representation on those presumed.

This means that the previously proposed remedy for disproportionately low minority representation on those bodies will be substantially strengthened. The previous remedy would have had the LEAA Administrator ask the Governors to invoke their own authority to achieve more equitable representation. As with the proposed guideline relating to minimum height requirements (discussed in the next section) this remedy, if adopted, should be incorporated in future funding agreements as an added means of assuring enforceability.

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[31] Action on the eighth complaint, received in December 1971, was being held in abeyance while the respondent undertook some affirmative actions.

[32] The other two are pending. One of these involves a complained-against party who had received no LEAA assistance.

[33] *The Chicago Police Department: An Evaluation of Personnel Practices*, prepared for LEAA by consultants Whisenand, Hoffman, Sealy, and Boyer.

[34] The survey team did not become directly involved in the investigation until March 1972. The time lag between the filing of the complaint and LEAA's assignment of the team is unexplained.

[35] LEAA staff members do not anticipate any problems with the Chicago Police Department's implementation of the affirmative actions necessary to overcome identified deficiencies in its personnel practices. It is worth noting that in the case of a complaint involving the recipient of only a small amount of LEAA assistance, the agency has taken the position that an investigation probably would not be performed unless the recipient later applied for additional funds. There would seem to be no justification for such a policy. Every complaint, regardless of the amount of funding, should be investigated.

[36] LEAA personnel have indicated that they might proceed with administrative sanctions where there was *de minimus* minority participation in a program aimed at minorities. For all intents and purposes, however, it seems that LEAA has administratively repealed the remedy of fund cutoff. The LEAA Administrator has stated that in his judgment neither the Constitution nor LEAA's EEO regulations absolutely prohibit the supplying of Federal funds to a recipient found in noncompliance.

In the guideline concerning minority representation, reference is made to LEAA's 1970 *Guide for Comprehensive Law Enforcement Planning and Action Grants*. In addition to requiring balanced representation on planning agencies, including representation of community or citizen interests, the *Guide* stipulates that one board member may represent more than one element or interest. As noted in previous correspondence from the Commission to LEAA, potential problems arise when one person represents more than one constituency (e.g., community and local law enforcement interests)—especially constituencies with disparate interests. In order to assure balanced representation, the administrative requirements should specify that citizen interests should be represented independently of other interests. In other respects, this Commission finds the substance of the proposed guidelines to be adequate.

B. Minimum Height Requirements

LEAA recently proposed a guideline on minimum height requirements for peace officers which states: "The purpose...is to eliminate discrimination based on national origin, sex and race caused by the use of restrictive minimum height requirement criteria where such requirements are unrelated to the employment performance of law enforcement persnonnel."[38] Although the guideline is acceptable, it refers to "employee selection action" covering employment only, suggesting an unwarrantedly narrow application of the guideline. Although the most prominent problem with minimum height requirements clearly relates to employee selection, it is conceivable that there may be height requirements which vary, for example, according to assignment. It would be desirable to couch the guideline in terms of employee selection, assignment, or similar actions.[39]

C. Affirmative Action—Goals and Timetables

This Commission has recommended repeatedly that LEAA's EEO regulations be amended to require all recipients and subgrantees to develop and implement affirmative action plans pertaining to employment. Such a requirement would not conflict with the LEAA legislation's proscription against requiring percentage ratios or quota systems to achieve racial balance or eliminate racial imbalance in a law enforcement agency.[40]

While the LEAA Administrator apparently has no difficulty with such aspects of affirmative action as recruiting at minority schools and validating tests,[41] he contends that the statute bars LEAA from requiring goals and timetables. Although he has invited private civil rights groups to challenge the constitutionality of the statutory prohibition, he has indicated that he will not ask Congress to delete it.

D. Private Technical Assistance

LEAA has sought to increase the compliance capabilities of SPAs, Regional Councils, and individual recipients with grants and contracts for technical assistance. Most notable among these has been a 2-year, $390,000 grant to Marquette University Law School to establish a Center for Criminal Justice Agency Organization and Minority Employment Opportunities. The Center's primary objective is to supply technical assistance on minority employment to criminal justice agencies—if the agencies request such assistance.

As of August 1972, approximately 17 agencies had been assisted by the Center staff. Because of the Center's limited resources, priorities have been established which have caused some requests for assistance to be rejected or left pending. The Center has issued a number of studies which may be useful to agencies denied direct assistance.

LEAA has awarded a $350,000 grant to the National Urban League to establish three community-based minority recruitment projects in Newark, Cleveland, and Dallas. The project will inquire into why minorities resist careers in law enforcement.

LEAA anticipates that these and similar projects that are planned will greatly "assist local and State agencies in addressing their compliance responsibilities and... LEAA in developing a methodology relating to the im-

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[37] In an April 21, 1972, letter to Representative William Clay (reported in the May 17, 1972, Congressional Record at E5355), the LEAA Administrator reported that the agency's Statistical Division had completed a survey of minority representation on all SPAs and Regional supervisory boards. The survey is still being analyzed. A 1970 suit against the Mississippi Commission on Law Enforcement, challenging representation on the supervisory board of this SPA, was recently decided. See *Allen v. Mississippi Commission of Law Enforcement*, Civ. Action No. 4487 (S.D. Miss. Nov. 20, 1972). The court held that the plaintiffs failed to prove their cause of action, but it required the Governor to show cause why he should not appoint at least five qualified blacks to serve on the SPA.

[38] In order to justify use of minimum height requirements, it will be incumbent upon the recipient "to demonstrate convincingly through the use of supportive factual data such as professional validated studies that such . . . requirements.... are an *operational necessity* for designated job categories." (Emphasis added.) The guideline provides this definition of "operational necessity":

> It shall refer to an employment practice for which there exists an overriding legitimate operational purpose such that the practice is necessary to the safe and efficient exercise of law enforcement duties; is sufficiently compelling to override any discriminatory impact; is effectively carrying out the operational purpose it is alleged to serve; and for which there are available no acceptable alternate policies or practices which would better accomplish the operational purpose advanced, or accomplish it equally well with a lesser discriminatory impact.

[39] The guideline has been submitted to the appropriate committee of the National Association of Criminal Justice SPAs for review and comment.

[40] 42 U.S.C. 3766 (b).

[41] LEAA has requested the Civil Rights Division to provide a memorandum regarding the kinds of affirmative action that are acceptable.

provement of minority employment and operational practices within the criminal justice community." These efforts appear worthwhile, but it is too early to assess them.

VI. ORGANIZATION AND STAFFING

LEAA's civil rights operation is entirely centralized, and the Director of the Office of Civil Rights Compliance (OCRC) does not envision that any significant compliance responsibilities will be delegated to regional staff. Given the number of recipients to monitor, some regionalization of compliance responsibilities seems warranted.

OCRC's Director [42] reports directly to the Administrator. He has eight full-time professionals on his staff, of whom seven devote more than half their time to Title VI-EEO matters.[43]

Each OCRC staff person is responsibie for a specific staff function—such as complaint processing, compliance reviews, and compliance report forms. Other responsibilities are assigned, when necessary, on an *ad hoc* basis.

In addition to the OCRC staff, other LEAA personnel contribute to civil rights operations. For example, a computer systems analyst from the Information systems Division is assigned full time to work with OCRC "in data gathering and tabulation to expedite its fact-finding processes." Audit staff has participated, to some extent, in compliance review and has assisted OCRC staff in preparing civil rights manuals. LEAA reports that:

> Broad coverage of the [agency's] compliance responsibilities . . . [is] now either in operation or will be operational during FY 1973. *Sophistication of that effort* to provide in-depth, operational expertise in specific compliance problems of the criminal justice system *will depend upon the extent to which staffing levels can be increased.* (Emphasis added.)

Under optimum circumstances, according to LEAA, eight additional professionals could be brought into OCRC during Fiscal Year 1973. This is significantly below what is needed, but LEAA maintains that the influx of more staff would "seriously interfere with the work flow in OCRC." LEAA states that staff increases of eight professionals also could be absorbed by OCRC in an orderly fashion in both Fiscal Years 1974 and 1975, but this still falls short of what this Commission perceives as an adequate staffing level. It also unduly prolongs the attainment of a full staff.[44]

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[42] The Director is still at the GS-15 level.

[43] The remaining professional is a contract compliance specialist.

[44] It should be noted that LEAA has conducted civil rights training sessions for headquarters and most regional program staffs (who are involved primarily in supplying information necessary to resolve a complaint or conduct a review), audit staff, and State-employed auditors. A soon-to-be-published report, prepared by the Lawyers' Committee for Civil Rights Under Law for the National Urban Coalition, indicates that the General Accounting Office and others have pointed out that LEAA's 38-man audit staff is inadequate to perform proper fiscal audits for a program the size of LEAA, much less to assume civil rights enforcement responsibilities.

DEPARTMENT OF LABOR (DOL)

I. OVERVIEW

The Labor Department has developed some aspects of an effective civil rights enforcement program. Its compliance manuals are detailed, and its compliance reporting system produces an extensive amount of racial and ethnic data, although it needs refinement.

Nevertheless, major problems remain. The program is understaffed, and decentralization of the Manpower Administration has damaged the agency's civil rights program.

The failure of regional equal opportunity staffs to conduct adequate preaward or postaward reviews, in terms of either number or quality, is related to both the inadequate size of these staffs and their low productivity. The small size of the Department's Office of Equal Employment Opportunity, along with the significant dilution of its authority caused by the decentralization, offers little opportunity for that Office to serve in anything more than an advisory, policymaking capacity.

A continuing difficulty is the Department's dependence on protracted negotiations with noncomplying recipients. After 7 years of dealing with the same States and communities, there appears to be little reason to extend discussions with recipients found to be discriminating.

II. PROGRAM AND CIVIL RIGHTS RESPONSIBILITIES

The Department of Labor's Title VI responsibilities encompass the various manpower programs administered by its Manpower Administration (MA). Principal recipients of DOL financial assistance are State Employment Service (ES) and Unemployment Insurance System (UIS) agencies and private contractors which sponsor manpower training programs.

The most important aspect of DOL's Title VI program, by far, relates to local offices of the State employment security agencies. These State agencies in Fiscal Year 1973 will receive more than $400 million in Federal assistance. The U. S. Training and Employment Service (USTES) is the mechanism for providing training and employment services throughout the country. These services are furnished primarily through a network of local offices[1] which are funded mostly by Federal grants and administered by the State agencies. The intended beneficiaries are primarily the unemployed and underemployed.[2]

In Fiscal Year 1972, over 10,000 contractual program sponsors were engaged in manpower training programs, ranging from Work Incentives Program (WIN) to the Concentrated Employment Program (CEP).[3] These programs typically provide employment, work-training experience, referral, counseling, and other supportive services to unemployed and underemployed persons.[4]

III. COMPLIANCE MECHANISMS

A. Compliance Report Forms

DOL's compliance reporting system elicits extensive racial and ethnic data on services provided to program beneficiaries, as well as on the employment practices of some recipients. Each State employment security agency submits a monthly statistical report on persons served by race and ethnicity.[5] This Employment Service Automated Reporting System (ESARS) constitutes an integral part of DOL's Title VI process.

Despite the impressive array of data available through this system, there is some question about whether it is being used to the fullest extent. According to DOL, the ESARS reports "give a clear indication of State agencies who may be in violation of Title VI." However, ESARS data are required only on a statewide basis, and local office summaries are required at the discretion of the State agency. This limits the evaluation capabilities of DOL's regional staffs and obviously could obscure discrimination at the local level. Although DOL has a capability to collect other significant data (e.g., salaries and the location of jobs in which minorities are placed), this information is not uniformly collected or analyzed.[6]

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[1] Services provided by the local offices include testing, counseling, referral to training, job development, job placement, and followup.

[2] Some of the more prevalent forms of discrimination which may occur in State agencies are: placing minority applicants in occupational classifications not commensurate with their qualifications; steering minorities to "dead-end" jobs or to certain employers only; serving discriminatory employers; and failing to employ minorities in numbers proportional to the racial and ethnic composition of the office's population. Forms of discrimination which might manifest themselves in State unemployment insurance programs include disqualifying claimants on the basis of race or ethnicity and scheduling benefit-rights interviews on a racially segregated basis.

[3] Similar programs include Operation Mainstream, Neighborhood Youth Corps, Job Opportunities in the Business Sector (JOBS), and the National On-the-Job Training Program (OJT).

[4] Discrimination can occur in the selection of enrollees by the program sponsors, as well as in the training, work experiences, and other supportive services (e.g., counseling and placement) given the participants.

[5] Because of staff limitations, these reports are required only quarterly in some regions.

Sponsors of MA programs submit data on the racial and ethnic composition of participants. According to DOL, this information—used in conjunction with 1970 census data—gives an accurate picture of the sponsors' Title VI compliance. DOL is attempting to develop a "Universe of Need" profile for each program area. This would assure that the race and ethnicity of participants is equivalent to that of the eligible population. Until this device is ready—expected to be the end of Fiscal Year 1973—it will be difficult to identify many program sponsors who have not achieved this balance.

DOL is refining its compliance reporting system by working—to use one example—with the ESARS staff to develop the means of identifying civil rights problem areas and facilitating the disclosure of specific Title VI violations. DOL also is developing a self-evaluation instrument which would permit program sponsors to assess their own compliance. This, however, is meeting resistance internally, as well as from program sponsors.[7]

A revised monthly reporting system for all manpower programs was discussed recently at a July training session for regional equal opportunity staffs and associate regional manpower administrators. This system would follow an entirely new format. It is being tested in the field, and the results are to be reported by September 5, 1972. Notwithstanding the many report forms already required from program recipients, there is a need—reflected in these efforts—for a more effective system of evaluating and utilizing the information collected on the forms.

Field civil rights staffs also must file regular reports with the national office. These reports aid both national and regional officials in assessing field compliance operations. The reports are designed to identify problems in terms of delivering program services. They summarize, on a biweekly basis, the handling and status of complaint investigations, preaward and postaward compliance reviews, and related equal employment opportunity (EEO) activities, such as liaison with other agencies and training. The limited information solicited on these forms and the small national office staff to review them suggest that these reports are little more than a recordkeeping divice.[8]

Reporting on ES Staffs

Each State employment security agency is required to submit an annual report giving the racial and ethnic composition of its staff at all occupational levels, its population served, and its applicants. A report is required on each component office of a State agency, along with a consolidated State report.[9]

Examination of ES staffing is based on the concept that lack of representative numbers of minorities on the staff adversely affects equal opportunity by making the staff less effective in responding to the manpower and employment needs of the community. Instructions concerning minority representation on ES staffs require all agencies to submit a minority staffing plan, showing goals for each local employment service and unemployment insurance office. This plan is part of the State's Plan of Service, which constitutes justification for the agency's budget request.[10]

Each State agency's minority staffing is evaluated against the goal of making its staff at least parallel, at all levels, to the racial and ethnic composition of the State's population and, ideally, to the applicants it serves. This Commission noted in its *One Year Later* report, however, that State plans projected through Fiscal Year 1972 did not seem sufficient to overcome the effects of past discrimination and that it was not clear how much time DOL would give the States to achieve representative levels. These issues deserve continued attention[11] in the forthcoming regional reviews and subsequent national reviews of State agency staffing plans being submitted as part of the Fiscal Year 1973 Plans of Service.[12]

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[6] The analysis would show, with more precision, the effectiveness of services furnished by local offices.

[7] Self-evaluation forms already are used both by ES agencies and MA contractors, so the instrument referred to is evidently a revision. In any event, the significance of such a system turns on whether it is a substitute for, or supplement to, comprehensive Federal monitoring.

[8] Form MA 7-91 reports the number of complaints received and closed and the number of reviews initiated and closed, by program. It provides space for a brief narrative on other EEO activities. Forms MA 7-92 and MA 7-93 summarize, respectively, each compliant reviewed or closed and each review initiated or closed. Space is provided for a summary of findings, recommendations, and negotiation results. It is difficult, however, to conceive of the national office staff being able to discern investigative deficiencies by examining any of these documents—aside from detecting, perhaps, unjustified time lags.

[9] When instructions for this uniform system were promulgated, the 1963 Federal Merit System Standards of Personnel Administration were in effect. These standards simply prohibited discrimination in personnel actions. They have been superseded by 1971 standards which not only prohibit discrimination but mandate a program of affirmative action to assure equal employment opportunity in administering the State system. See Field Memorandum No. 434-71, Oct. 27, 1971, transmitting U. S. Civil Service Commission interpretations or Federal standards for State and local merit systems serving grant-aided programs.

[10] See General Administration Letter (GAL) 1452, Jan. 14, 1972, and Field Memorandum (FM) No. 60-72, transmitting instructions for preparing the Fiscal Year 1973 State Agencies Plan of Service, Plan of Operation, and Budget Instruction (including instructions for completing Form MA 4-51, which relates to minority group staffing plans).

[11] A recent report from the regional manpower administrator in Atlanta highlights a potential problem area. It points out that Alabama is operating under court order which directs the State agency to employ minority group members on a basis comparable to the minority population of the State. The report notes that the agency has made a concerted effort to recruit and hire minorities who are not required to take written Merit System examinations for intermittent and less than full-time employment." As a result, that agency has ex-

The importance of seeing that States establish reasonable goals for minority staffing in all offices, at all occupational levels, cannot be overstated. It is imperative that the phase of the State Plan of Organization relating to minority staffing be carefully scrutinized by the national office before the Regional Operating Plans are approved. It would seem, however, that the responsibility for maintaining continued watch over State implementation of minority staffing plans should rest largely with the regional civil rights staffs, with the headquarters OEEO supplying support and technical assistance.

B. Preapproval Reviews

In the second half of Fiscal Year 1971, regional EEO personnel conducted 295 preaward compliance reviews of contractual programs. In all of Fiscal Year 1972, however, only three were performed.[13] It is difficult to account for this sharp decline, since all of the more than 10,000 MA program sponsors were either funded for the first time or refunded during Fiscal Year 1972.

Preaward reviews may be performed onsite or simply at the desk. DOL manuals and handbooks indicate a clear preference for the former, but they recognize that the large number of contracts may dictate an at-the-desk review. Further, the MA Manual on EEO supplies criteria for determining when to conduct an onsite review:

> When a proposal is received from any sponsoring agency or company against whom a valid complaint has been lodged within 3 years of the date of the proposal or against whom there is evidence that the company has been traditionally unfair in its employment practices . . . [and in the case of] and contract awards totalling $50,000 or more . . . if the contractor receiving the award is new and unknown to the contracting unit.

Notwithstanding the adequacy of DOL's guidelines for preaward reviews—aimed at both Executive Order 11246 and Title VI matters—almost no preaward reviews were performed during Fiscal Year 1972.

C. Postaward Reviews

DOL guidelines for conducting compliance reviews of both ES agencies and MA program sponsors are extremely comprehensive and well organized. Nevertheless, the compliance reviews examined were incomplete in terms of noting whether recommendations for corrective action actually were being implemented.

According to the Compliance Officers Handbook, established policy calls for each regional office to conduct an annual compliance review of each State ES agency and selected local offices, as well as each *major* contractual program in the region. The term "major" is not, however, defined.

In Fiscal Year 1972, there were 2,825 State ES and UIS offices and 10,613 MA program sponsors subject to Title VI. Yet, departmental personnel conducted only 160 onsite postaward compliance reviews during this period.[14] This averages 14.5 reviews per region.[15] Even allowing for time spent on preaward reviews (only three were reported for Fiscal Year 1972), complaint investigations, and other Title VI activities, it would appear that the present staff —while insufficient to perform the number of reviews desirable —is probably underutilized.

DOL says the total of 160 reviews "reflects the concern of the regional offices in reviewing the areas (1) where problems have been found in the past or (2) GAR (Government Authorized Representative or project officer) reports indicated the likelihood of problems requiring quick attention." These criteria, conceivably useful in setting priorities, are clearly inadequate as the sole criteria for scheduling reviews. They would tend to restrict reviews to the few recipients which have been reviewed in the past. They would cause the civil rights staff to rely heavily upon the unsophisticated judgment of GARs[16] for identifying new Title VI problems.

In addition to the guidance for conducting compliance reviews in the MA Manual on EEO and the

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ceeded the minority population percentage in *intermittent* and *part-time* jobs," some of which last 11 out of 12 months in the year." The suitability of this practice is somewhat dubious, since it is unclear what eventually happens to these part-time employees.

[12] As noted in a May 1972 memorandum from the deputy manpower administrator to the acting regional manpower administrator in Chicago, enactment of the 1972 Equal Employment Opportunity Act brought the employment practices of State ES agencies within the jurisdiction of the Equal Employment Opportunity Commission. The memorandum summarized the progress made by States within the region, noting some statewide deficiencies. It stressed the importance of the regional office identifying local offices where minorities are under-represented. It was pointed out that heavy minority staffing in one or two metropolitan offices, or in State headquarters, is an unacceptable means of achieving proper representation in statewide totals. Similar letters presumably were sent to other regional manpower administrators.

[13] This figure is based on DOL's response to an OMB questionnaire. DOL failed to respond to this Commission's question on this subject.

[14] It is not known how many reviews were ES/UIS operations and how many were of program sponsors.

[15] Since there are, on the average, 2.4 staff persons in each region devoting full-time to Title VI activities, each staff person conducted about six compliance reviews during Fiscal Year 1972. Six of the 11 regions have a staff of two; three regions have three each; one has four; and one has only one.

[16] This is especially true in light of the fact that GARs spend only 5 percent of their time on Title VI matters.

Compliance Officers Handbook, supplemental instructions have been issued by some regional manpower administrators. The quality of these supplemental instructions varies considerably, judging from the samples Commission staff reviewed. Some uniformity, it would appear, is desirable.

Nineteen recipients were found in noncompliance during Fiscal Year 1972. In two cases, involving MA program sponsors, the finding was that unequal services had been provided to Spanish surnamed individuals in counseling and testing. DOL initiated action in February 1972 to terminate them, but has taken no such action against other noncomplying recipients.[17] Other cases of noncompliance were being negotiated or were in some stage leading to negotiation; e.g., formulation of recommendations. Considerable followup will be necessary to assure conformity with any commitments negotiated.

D. Complaint Investigation

DOL received 168 Title VI complaints during Fiscal Year 1972. It is difficult, however, to assess DOL's system for handling complaints.[18]

E. Monitoring of Field Activities

Because of the decentralized nature of DOL's equal opportunity operations, complaint investigations and compliance reviews performed by regional staff are not routinely submitted to the national office for concurrence or examination. Aside from onsite monitoring (discussed *infra*), the only basis for assessing regional equal opportunity performance has been the biweekly reports (discussed *supra*) which appear to be more for recordkeeping than evaluative purposes.

Onsite reviews of regional offices by headquarters staff constitute the principal means of monitoring field operations. These are supposed to be conducted at each regional office on a semiannual basis. Reviews of the 11 regional offices were scheduled for April through June. As of the middle of August, however, only one—Region II—had been reviewed. It was DOL's expectation that the rest would be completed before September.

The draft review of Region II disclosed a number of serious deficiencies. These included overreliance on interview statements and general observations in complaint investigations, to the neglect of indepth record searches; the cursory nature of compliance reviews of State ES agencies, which tend to focus on program operations of local offices rather than on their equal opportunity posture; the absence of a workable system for conducting preaward reviews, resulting in a minimal number of these reviews; and the failure of project officers to monitor field activities, apparently because of lack of training. The review also noted that an absence of complaints does not necessarily mean an absence of equal opportunity problems. It added that in-depth compliance reviews of ES offices probably should be planned, and a wide segment of the community should be contacted in the course of the reviews. This reference suggests that indepth compliance reviews are not conducted as a matter of course. And it would seem logical that interviews of minority citizens be an integral part of any compliance review.[19]

Regional operations can be improved only if deficiencies discovered in a review are promptly corrected.[20] Rather than waiting until the next onsite review, national office personnel should require full reports on corrective actions as soon as they are taken.[21]

IV. ENFORCEMENT ACTIONS

DOL's strategy toward noncomplying recipients continues to be one of negotiation. No administrative sanctions, such as fund terminations and grant deferrals, were invoked during Fiscal Year 1972. This Commission has repeatedly criticized DOL for this stand, maintaining that it often has resulted in protracted negotiations that compromise the spirit, if not the letter, of Title VI.[22]

A sense of DOL's reluctance to impose administrative sanctions or take judicial action against noncomplying recipients can be obtained from instructions to recipients in one region,[23] intended to apprise the recipients of the format for Title VI negotiations.[24] One of the issuances concerning ES agencies states that "once full implemetation is assured, the negotiation will be closed by letter." Mention is made of followup reviews, but nothing is said about administrative or judicial proceedings—conveying, by its absence, the impression that no such action is seriously contemplated.[25]

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[17] Moreover, no prospective MA program sponsors were barred because of findings made in preapproval reviews.

[18] Although most complaints were disposed of expeditiously, the notation regarding disposition of many complaints was unspecific; e.g., "remedied" or "closed." In one complaint, received in October 1971, the allegations were substantiated, but the complaint was still pending. There was considerable vagueness about the nature of many complaints. Others showed such dates as Jan. 7, 1971 and Nov. 26, 1971 but reflected nothing under findings or disposition. Many related to such non-Title VI issues as age or sex discrimination, raising questions about whether all 168 complaints actually involved Title VI.

[19] See the *Compliance Officers Handbook* (revised January 1972) at 41.

[20] Some of the deficiencies noted in a September 1971 summary of a monitoring visit to Region II (*e.g.*, weaknesses in choice of evidence used to support points in complaint investigations and compliance reviews) seem to have persisted.

[21] For example, if compliance reviews of ES agencies are found to be superficial, as was the case in Region II, the regional staff should be required to submit each review for national office analysis. This would assure immediate corrective action. DOL intends to supplement the present monitoring system with internal studies based on the EEO biweekly and quarterly performance reports. With respect to the biweekly reports, at least, the value of such studies would seem to be limited to measuring quantitive aspects of performance. DOL notes that in Fiscal Year 1973 EEO activity will be included in the Operational Planning and Control System (OPCS), the principal regional and natonal management system for all MA programs. The implications of this step are unclear.

[22] A memorandum of understanding finally was agreed to by DOL (along with the Department of Justice) and the Ohio Bureau of Employment Services (OBES) in November 1971—more than 3 years after discrimination by this agency was disclosed by a DOL investigation. While the delay in reaching a settlement was partly caused by a change in Administrators, this change did not occur until more than 2 years after the civil action was originally filed.

California supplies an illustration of DOL's approach to negotiation with noncomplying recipients. In December 1970, final reports on an investigation of the California Employment System disclosed that the system was "operating in a manner that constituted different and inferior service to non-English speaking minorities." There were more than 10 specific findings of discrimination. Nevertheless, the agreement negotiated between DOL and the California Department of Human Resources Development (HRD)—signed approximately 9 months after the findings were made—stipulated that "there were no overt violations of Title VI. . . disclosed in the recent compliance reviews conducted by the Department of Labor."[26] This completely contradicted DOL's response to a Commission questionnaire more than a month after the agreement became final.

V. MISCELLANEOUS

The Manpower Administration has not formulated a policy on the applicability of Title VI to all planning and advisory bodies, but its established policy for the Cooperative Area Manpower Planning System (CAMPS)[27] implies some racial and ethnic requirements.[28]

Aimed at establishing a system for cooperative planning of and conduct of manpower training and supportive services, CAMPS was revised in May 1971 to correspond to the decentralization of DOL's MA. The primary purpose of the change was to set up a network of area and State manpower planning councils, funded principally by DOL, to serve in an advisory capacity and identify manpower needs, set priorities, and develop comprehensive manpower plans.

The revised system set general principles for selecting members of the planning councils. Although a requirement for minority group representation was not specifically enunciated, it was implied.[29] From a civil rights perspective, more explicit guidelines would be desirable.[30] Since these bodies receive Federal assistance and formulate plans which affect the intended beneficiaries of manpower programs, discriminatory memberships would clearly violate Title VI. Discrimination in selection of council members, especially the client group representatives, should be prohibited. There should be a presumption of a Title VI violation if there is a substantial disparity between the proportion of council members from a particular minority group and the proportion of clients from that minority group.

VI. ORGANIZATION AND STAFFING

There has been virtually no change in either the organization or staffing patterns of DOL's national and regional Office of Equal Employment Opportunity since this Commission's last followup. There was merely a net increase of two staff persons.

DOL intends to maximize the Title VI responsibilities of the Government Authorized Representatives (GARs) who are responsible for the overall performance of MA contractors and State ES agencies. According to DOL, the GARs presently devote 18 man-years to Title VI matters, or approximately 5 percent of their time. Added to a civil rights staff of 34, this constitutes 52 man-years expended on Title VI.[31]

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[23] Negotiations for corrective action continue to be decentralized. Although other regions may have issued different types of memoranda, the cited issuances are probably representative of the negotiation approach in all regions.

[24] See, e.g., ES Agency Issuance No. 80-72 from T. C. Murrell, Acting Regional Manpower Administrator for Region VI, to all State Employment Security Agencies, Mar. 24, 1972. See also CEP Sponsor Issuance No. 38-72 and Public Service Careers and New Careers Sponsors Issuance No. 11-72, same date and region.

[25] Issuances to MA sponsors carry a vague implication of possible enforcement action: "If recurring Title VI violations are noted, a determination will have to be made concerning necessary enforcement action."

[26] Some discriminatory findings (e.g., practically all job orders posted for applicants were in English) were summarized in prior DOL correspondence but were not dealt with specifically in the agreement. The language of the settlement seems weak in parts. For example, it stated that "Services in languages other than English are construed as a client need to be met within the constraints of feasibility and reasonability and within the administrative discretion of Human Resources Development."

The settlement seemingly cites *Carmona* v. *Sheffield*, 325 F. Supp. 1341 (D.C. Calif. 1971), as authority for this proposition. The case involved an allegation by Spanish speaking citizens that they had been denied equal protection because HRD, in administering the unemployment insurance program, conducts its affairs in English. The action was dismissed, the court holding that this is a public policy question for the appropriate legislative bodies.

In view of the fact, however, that DOL investigators found that non-English speaking minorities were receiving inferior services, the agreement to permit administrative discretion in dealing with a recognized client need seems unwarranted. The *Carmona* decision was not binding on DOL, which clearly had authority to use its administrative discretion to go beyond judicial requirements.

[27] CAMPS is MA's major planning and advisory mechanism. Through this system funds are provided for State and local manpower planning staffs, which cooperate in manpower planning. CAMPS evolved out of a 1967 interagency agreement (CAMPS Interagency Cooperative Issuance No. 2, March 3, 1967). Present members of the agreement are the Departments of Labor; Health, Education, and Welfare; Housing and Urban Development; Agriculture; Interior; and Commerce; the Office of Economic Opportunity; the Civil Service Commission; and the Environmental Protection Agency.

[28] See CAMPS, Interagency Cooperative Issuance No. 72-2, May 21, 1971.

[29] For example, the principles stated that "client group representatives" (i.e., persons selected from among the basic population groups of manpower program clients) should be representative of and have the confidence of the communities from which they are chosen.

[30] A clarifying memorandum from the New England regional manpower administrator to all Governors and mayors in the region reiterates the need for balance among the three sectors (i.e., clients, agency-sponsor and business-labor) from which council members are appointed. The memorandum specifically redefines what is meant by client sector representatives and clearly suggests that the guidelines permit excessive latitude in appointing council members, thus failing to assure an equitable balance.

Even assuming optimal use of civil rights staff, GARs and others, DOL clearly is not adequately staffed to fully discharge its Title VI responsibilities. The personnel shortage seems particularly acute at the national level, where responsibility for monitoring regional Title VI activities rests.[32]

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[31] This unaccountably does not square with DOL's July 1972 response to an OMB questionnaire. That response reported 32.6 man-years expended on Title VI matters.

[32] The shortage is heightened by the decentralized nature of DOL's civil rights organization, which precludes the national OEEO from exercising line authority over regional civil rights staffs.

OFFICE OF ECONOMIC OPPORTUNITY (OEO)

I. OVERVIEW

OEO's Title VI program is not extensive. The agency's major civil rights problem is allegations of OEO and CAA employment discrimination, and that is handled by means other than Title VI. OEO utilizes pre-grant reviews effectively. Requiring an affirmative action plan for both program participation and employment is a good practice. Insufficient attention, however, is paid to determining whether the plans are in fact implemented by grantees.

Further, the OEO civil rights program is adversely affected by the failure of OEO's Office of General Counsel to act promptly on important jurisdictional questions assigned to it.

II. OEO'S PROGRAM AND CIVIL RIGHTS RESPONSIBILITIES

The Office of Economic Opportunity was established by the Economic Opportunity Act of 1964. Its major programs are administered through Community Action and Special Purpose Agencies. Through a variety of component programs—such as Legal Services, Comprehensive Health Centers, and Neighborhood Centers — the Community Action Agencies (CAA) provide financial support for local antipoverty campaigns in urban and rural areas, on Indian reservations, and among migrant and other seasonally employed workers.[1]

Many of the Special Purpose Agencies are involved in research and demonstration projects in such fields as community development, urban and rural economic development, early childhood development, and education.

The OEO's Office of Human Rights is responsible for development implementation of OEO's civil rights policies. The Office's concerns extend beyond Title VI to special grant conditions relating to civil rights. For example, under General Conditions issued by OEO, civil rights coverage has been extended to the employment of grantees.

III. COMPLIANCE MECHANISMS

A. Pre-grant Reviews

Unlike the grantees of many other agencies, OEO grantees are primarily community groups that organized in order to qualify for OEO fundings and did not exist as separate entities until they receive OEO grants. The *pre-grant* review consists of an examination of documents submitted to justify funding or refunding. Among those documents are (1) an affirmative action plan for ensuring equal opportunity for participation in all phases and levels of grantee programs, and (2) racial and ethnic data on minority groups in the target area. Grant proposals are examined jointly by program and human rights officials in OEO's regional offices.

B. Affirmative Action Plan

OEO feels that its major civil rights thrust is its affirmative action requirement, rather than onsite reviews or complaint resolution. The agency believes it can better reach grantees through affirmative action, since it conducts few onsite reviews and affirmative action plans are required for funding or refunding a project.

While draft guidelines for grantee affirmative action plans have not been formally issued by OEO, similar guidelines have been developed by regional directors and circulated to grantees. Since it is known that regional directors will not accept grant applications until an acceptable plan has been submitted, grantees have regarded the regional guidelines as binding.

Essential elements of the affirmative action plan are equal employment opportunity within the grantee staff and the staffs of the vendors from which the grantee purchases goods and services; equal opportunity in benefit participation and distribution; and the fostering of institutional change in the community. Definitions and instructions relating to the latter requirements are vague.[2]

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[1] Some of OEO's successful programs have been transferred to older and larger Federal agencies. For example, Head Start and other child care programs have been delegated to the Department of Health, Education, and Welfare; the Job Corps program to the Manpower Administration of the Department of Labor; and VISTA to Action.

C. Compliance Reviews

Compliance reviews are postgrant reviews conducted onsite to determine whether the affirmative action plan has been implemented, and/or whether the grantee has carried out any requirements imposed as a condition for continued funding.[3]

During Fiscal Year 1972, only 44 onsite compliance reviews were conducted—33 less than in Fiscal Year 1971. The number of reviews conducted by regional offices ranges from zero in San Francisco to 18 in Atlanta, with the average for the 10 regions being approximately four. All of the grantees reviewed were found to be in some degree of noncompliance. The majority of the problems involved employment practices and conflict between minority groups seeking equitable representation and services.[4]

No action has been taken during Fiscal Year 1972 to terminate grants because of noncompliance with civil rights requirements. However, grants have been terminated for violation of program requirements,[5] and some of these grantees were also in violation of Title VI.[6] Other methods used to get compliance are voluntary negotiation, backed by the threat of fund termination, and the imposition of special requirements as conditions for continuance or refunding.[7] Timetables for corrective action are not given, apparently because refunding is primarily on a short-term (e.g., annual) basis, and the grantee risks not being funded if the corrective steps are not taken.

OEO still lacks a system for determining compliance review priorities and conducting periodic reviews. The number of compliance reviews conducted is inadequate for an agency with approximately 1,800 grantees.[8] Because there have been few new grantees in recent years, the agency is primarily refunding existing programs. It would seem that the limited scope of operations would facilitate better compliance enforcement, but such has not been the case.

D. Complaints

OEO complaint processing has been decentralized for several years. Each grantee must have an equal opportunity officer to receive and resolve Title VI complaints. If the complaint is not resolved there, it is forwarded to the regional level where effort again is made toward voluntary resolution. Complaints that cannot be resolved, and those involving discrimination in grantee employment practices, are sent to Washington for investigation and resolution. The Inspection Division, which performs the investigations, has been reorganized so that three inspectors spend full-time on civil rights complaints. This has improved the timeliness of resolving Title VI complaints. Complaint investigation reports reviewed by this commission were well documented and comprehensive.

E. Policy Issuances

Instructions on three important issues regarding the extent of OEO's authority have been drafted and are awaiting a determination by the Office of General Counsel. The issues involve vendor compliance, grantee affirmative action, and discrimination complaints against grantees involving employment, program particpation and benefits. Accord has not been reached within OEO on the extent to which it is empowered to bring its grantees into compliance.

The draft instructions have been under consideration for nearly a year, an inordinate length of time to defer policy statements. Reluctance to issue a policy statement clearly within the applicability of Title VI—such as the instruction on complaint resolution—is totally unwarranted.

IV. ORGANIZATION

A. Structure

The Office of Human Rights is the responsibility of the Associate Director of Human Rights, who reports to the Deputy Director and Director of OEO. The regional human rights chiefs work under the guidance and instruction of the Associate Director for Human Rights, and under the administrative direction of the regional office directors. Compliance decisions are made by regional office directors, under recommendations from the Office of Human Rights.

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[2] The three elements of the institutional change aspect of the plan are that the grantee staff be familiar with existing civil rights laws governing the community served; that the grantee utilize its purchasing power by buying from firms that practice nondiscrimination; and that the grantee identify discriminatory institutional practices within the community and determine how to make necessary changes. No examples of discriminatory institutional practices are given, nor is any information provided on how a community action agency would be able to undertake such action. A definition of institutional change and its measurement is not provided.

[3] Other onsite investigations are conducted in resolving complaints, but these are not considered compliance reviews.

[4] Increased awareness by OEO of the needs of poverty groups of a number of racial and ethnic backgrounds (e.g., Puerto Ricans, Chinese, Italian Americans, and Hasidic Jews) and the heightened interest by these groups in OEO programs has put a strain on the agency's compliance effort. Some groups formerly did not seek to associate with OEO programs. Others were not organized to establish a program. Finally, OEO took a narrow view of its responsibility. Now that this has changed, there is competition for control of CAAs and for an "equitable" share of OEO's diminishing resources.

[5] CAAs have been terminated for a variety of reasons, including misallocation of funds, ineffective operation, and failure to reach target groups.

[6] In some cases, Title VI termination procedures were intentionally avoided because of their cumbersome nature.

[7] A Colorado CAA supplies an example of special conditions in a grant agreement. The ethnic composition of the CAA board, advisory committee, and staff did not reflect the population of the target area and insufficient outreach work had been done to reach non-English speaking residents. Requirements to correct these matters were written into the grant agreement as special conditions to be met.

[8] There are 1,000 Community Action Agencies and 800 Special Purpose Agencies.

B. Staffing

OEO has no full-time professional Title VI staff. There are 14 full-time professional human rights officials who spend more than half of their time on Title VI enforcement. The 14 consist of three staff members in the Washington headquarters office, a human rights chief in each of the 10 regional offices, and a full-time assistant in the Atlanta office. A major problem for OEO at this time is charges of employment discrimination, so the human rights staff spends large amounts of time on complaints from within the agency and its grantees. As a result, Title VI compliance receives insufficient staff attention.

The Office of Human Rights has conducted no onsite monitoring of the operation of field offices, although Washington staff members do occasionally join regional staff in conducting onsite reviews. A system has not been devised whereby regional human rights offices are required to submit periodic work plans or assessments of regional civil rights problems.

C. Training

Human rights training programs have been held for the executive and middle levels of OEO's management and field program staff to sensitize them to civil rights responsibilities. Five regional offices have held human rights training programs for CAA directors and equal opportunity officers. Generally, the programs last several days and are directed by regional human rights chiefs, with participation by the associate director of human rights and, in some cases, outside consultants. There are plans to expand the program to the remaining regions during Fiscal Year 1973.

DEPARTMENT OF TRANSPORTATION (DOT)[1]

I. OVERVIEW

Both the Federal Highway Administration (FHWA) and the Urban Mass Transportation Administration (UMTA) have markedly improved certain aspects of their compliance programs. Other aspects, however, remain deficient, and signs of progress have been mostly promissory.

Neither Administration has been particularly innovative in identifying the long-range civil rights implications of its programs and the coverage afforded by Title VI. FHWA, for example, has not determined the extent to which Title VI applies to opportunities generated or facilitated by highway construction. Even where Title VI issues have been identified—for example, the selection of contractors— a uniform method of dealing with these matters has not always been spelled out.

UMTA has substantially improved its Title VI enforcement mechanism by establishing a system for analyzing the civil rights impact of proposed projects before funds are allocated. While the system has weaknesses, it is better than FHWA's by a wide margin. FHWA still has not developed even the most elementary system for collecting racial and ethnic data which could be used in preapproval reviews.

Despite the continuing need to identify more specifically what constitutes noncompliance and to develop more refined guidelines for postaward reviews, FHWA has materially upgraded the postaward aspect of its Title VI enforcement. UMTA also has improved the quality of its Title VI postaward reviews, but UMTA's treatment of Title VI aspects continues to be somewhat superficial.

A notable weakness in the enforcement programs of both FHWA and UMTA is their lack of civil rights staff. The manpower shortage is particularly acute at UMTA, where a drastic agencywide cutback has been experienced. This has significantly undercut the work of UMTA's Office of Civil Rights and Service Development, which has signoff authority on every project.

II. PROGRAM AND CIVIL RIGHTS RESPONSIBILITIES

FHWA administers a number of grant-in-aid programs through which financial assistance is provided to States—principally for planning, construction, and improvement of Federal-aid highways.[2] Although matching funds are required, Federal outlays for this program have been extremely large. Fiscal Year 1971 obligations exceeded $4.6 billion and are expected to rise to $5 billion in Fiscal Years 1972 and 1973.[3]

Major Title VI implications of the Federal-aid highway program relate to the immediate and direct consequences of highway location and construction—including such matters as community disruption[4] and family displacement and relocation–and to the future impact of the program in terms of housing and employment opportunities generated by the highway. The latter category involves such issues as suburban access, urban polarization, and central city viability.[5]

Highway location and design carries significant Title VI aspects. The kinds of problems that can occur at this stage may relate to the failure to obtain minority input in the planning process; the highway's creation of artificial barriers between majority and minority segments of the community; undue disruption of minority communities; and racial discrimination in relocating families.

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[1] This analysis will deal exclusively with the two administrations within DOT which have the most significant Title VI responsibilities: the Urban Mass Transportation Administration and the Federal Highway Administration. Operating agencies administering programs with less significant Title VI implications, such as the Federal Aviation Administration, will not be examined here.

[2] Principal source of these funds is the Highway Trust Fund, established by the Highway Revenue Act of 1956 for the exclusive purpose of financing highways.

[3] Most of the Federal funds are earmarked for the 42,500-mile national interstate system (projected to be completed by 1980 at a total cost of approximately $80 billion), for which FHWA pays 90 percent of the costs. FHWA also provides matching grants for State and urban systems.

[4] See the proposed amendment to FHWA Policy and Procedure Memorandum (PPM) 20-8, which would require State highway departments requesting location or design approval for a project to discuss the anticipated economic, social, and environmental effects of the proposals and alternatives. This would include the highway's impact on minority community cohesion. (37 F. R. 8398, Apr. 26, 1972).

[5] FHWA now concedes that mere access to highways regardless of race or ethnicity is an overly simplistic view of the Title VI implications of the Federal aid highway program.

How FHWA interprets these aspects of Title VI is unclear. Considerable vagueness surrounds the interpretation. Except for what can be gleaned from FHWA's interim Title VI review procedures (discussed *infra*), the Title VI regulations and supplementary materials offer no precise criteria.

Highway construction generates—or, at least, facilitates—such opportunities as the growth of employment centers in suburban areas of new housing. Viewed in this context, the opportunities become benefits of the program. If a disparity in their availability exists along racial or ethnic lines—possibly attributable to lack of open housing near the new opportunities—Title VI has been violated.

The argument usually advanced against this position is that these opportunities are not benefits of the programs. Rather, the counterargument runs, highways are constructed to meet identified transportation needs, some of which are generated by the opportunities instead of the reverse. While the argument cannot be examined exhaustively in this analysis, it is worth noting if only to point up the need for clarification.[6]

Selection and retention of contractors and subcontractors also are covered by DOT's Title VI regulations. These matters should be distinguished from the employment practices of contractors, which are covered by Executive Order 11246. The former is an area within the purview of Title VI which has received little attention at FHWA. It involves such issues as prequalification of contractors, bonding requirements, and the size of contracts which have significant civil rights implications.[7] FHWA receives a quarterly regional report identifying minority contractors; this report is simply transmitted to DOT personnel. No attempt has been made to analyze the extent of the problem. Furthermore, there is no uniform FHWA policy which would increase minority representation among highway contractors through such methods as reducing the size of contracts or waiving bonding requirements under certain circumstances.[8]

Employment practices of State highway departments merit brief treatment. With the exception of the Applachia Highway Program, Title VI generally does not apply.[9] DOT's "model" Title VI regulation, however, stipulates that when discrimination in employment practices tends to result in discrimination against the intended beneficiaries, the employment practices become subject to the Title VI regulation.[10] No effort really has been made to identify what employment categories might be covered by this provision. The need to do so may be obviated by 1972 amendments to Title VII.[11]

DOT continues to consider a proposed regulation which would extend coverage of employment practices to all DOT recipients. In the meantime, reviews of employment practices of State highway departments are based on Executive Order 11246 and the 1968 Highway Act, and are performed as part of Title VI compliance reviews and complaint investigations. The reviews seem to suggest that the policy is not being uniformly applied.[12]

UMTA's grants are made to State and local public agencies to assist them in providing facilities and equipment for urban public transportation.[13] The kinds of discrimination that might surface in UMTA's grant-in-aid programs are similar to those in the Federal-aid highway programs. Discrimination is prohibited on public vehicles operating as part of a federally assisted project, in the routing, scheduling, or service, and in the location of projects.[14]

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[6] Discussion of this subject should not be limited to Title VI, given the obvious implications of Title VIII of the Civil Rights Act of 1968.

[7] For example, while contracts are typically awarded through competitive bidding, some State prequalification procedures may prevent persons, on the basis of race or national origin, from even bidding. Similarly, bonding requirements and the size of contracts being awarded may disproportionately bar minority contractors because of their initially small financial capability. By continuing to award sizable contracts and impose stiff bonding requirements, the State may prevent smaller minority firms from ever achieving the financial capability to bid competively.

[8] This is not to imply that discrimination in selecting contractors cannot be easily corrected. However, while the FHWA civil rights staff is aware of efforts in such States as Washington and Michigan, it does not seem particularly disposed to grapple with this problem at the national level. Rather, the staff is content to deal with it piecemeal. As a result of a recent review of the North Carolina State Highway Commission, the regional Federal highway administrator requested that "if the State finds . . . that bonding presents an obstacle to minority contractors' consideration for award . . . then the State should have the flexibility to waive the requirements for bonding so that . . . (they) do not have the effect of discrimination."

[9] From an employment standpoint, Title VI is limited to instances in which a primary purpose of the Federal aid is to provide employment.

[10] A year ago, DOT attempted to stimulate increased utilization of minority personnel in the relocation programs of State highway departments. This conceivably could be viewed as an application of the Title VI regulation. The policy would be predicated on the premise that discrimination in selecting State relocation personnel would be reflected in discrimination against relocatees.

[11] A provision of the 1968 Highway Act has limited applcation to employment. This section requires States to give assurances that employment will be without regard to race or ethnicity when any part of the compensation involves Federal funds.

[12] Data on minority employment in State highway departments still are not routinely collected.

[13] In addition to capital facility grants (which may not exceed two-thirds of the project costs), there are technical studies grants, research and demonstration grants and contracts, managerial training grants, university research and training grants, and capital facility loans--all subject to Title VI. Total capital outlays (obligations) exceeded $330 million in Fiscal Year 1971, are estimated to be $1 billion in Fiscal Year 1973.
tal outlays (obligations) exceeded $330 million in Fiscal Year 1971 and are es-

[14] UMTA's Title VI Manual for Civil Rights Specialists (July 1972) analyzes Title VI violations. A curious aspect of the Manual is that some of the specfic discriminatory actions listed seem to have no particular application to UMTA programs. They relate, rather, to Department of Labor manpower programs; e. g., undercoding of occupational classifications and referral on the basis of race. Appendix C of DOT's Title VI regulations prohibit discriminatory employment practices by project sponsors or lessees, concessionaires, contractors, or licensees, or any organization furnishing public transportation as part of a federally

III. COMPLIANCE EFFORT

A. Data Collection

In October 1971, the Secretary of Transportation reported that DOT was in the process of developing procedures for collecting racial and ethnic data in order to evaluate Title VI compliance. "This project is considered to be of high priority," the Secretary stated, "and we anticipate the implementation of the necessary criteria and procedures within the next few months."

These procedures have not, however, materialized. A proposed amendment to DOT's Title VI regulations would require fund recipients to have racial and ethnic data showing the extent to which minority groups are beneficiaries of DOT programs. Any efforts to upgrade DOT's collection of racial and ethnic data since that date, however, have been limited to the individual efforts of DOT units.

FHWA

As noted in this Commission's *The Federal Civil Rights Enforcement Effort: One Year Later* report, FHWA had prepared a draft order which would have required collection of extensive racial and ethnic data on communities where highways were proposed. This order has not been put into effect. A pilot demonstration project, however, may lead to refinement and implementation of the order. The project is aimed at developing and testing procedures to ascertain compliance of highway planning projects with Title VI. It is being conducted by the Virginia Department of Highways in conjunction with FHWA.

The pilot study is examining a proposed project which will evidently cause extensive displacement. The procedures developed to ascertain Title VI compliance involve two questionnaires—one for businesses and one for residences—which were administered to a sample of firms and households. The State's location consultant will use the information to develop location recommendations for presentation to the State and for use at public hearings.[15] When the study is complete, it is anticipated that FHWA will determine, based on its analysis of the results, what procedures might be uniformly applied by all States. Again, the development of a comprehensive system for collecting racial and ethnic data continues to be promissory.

UMTA

Although UMTA has long required maps showing areas of minority concentrations and their relationship to proposed transportation facilities, it has been criticized for failing to use this compliance mechanism. UMTA recently made progress toward doing so. UMTA civil rights personnel review project applications to determine whether there is a disparity in services for minority and majority areas.

A pamphlet covering applications for UMTA funds explains that final applications must "contain sufficient demographic, economic and technical data to assist in comparing and evaluating existing conditions with forecasts and recommended changes." These data are required as part of an overall Title VI analysis to determine how the proposed project would affect minority areas.[16] One weakness in the process is that the criteria for identifying large minority areas have not been developed. This weakness is compounded by the fact that UMTA, using census data, only verifies the identification of minority concentrations on an *ad hoc* basis.

B. Preapproval Reviews

FHWA

Given the ongoing nature of the Federal-aid highway program, FHWA regards its Title VI reviews of the State highway departments as being both preapproval and postaward reviews.[17] Nonetheless, in the sense of reviewing, from a civil rights perspective, the impact of proposed projects prior to approval, FHWA conducted no Title VI preapproval reviews during Fiscal Year. FHWA might argue that such reviews already are conducted as a part of overall project reviews.[18] None of these involve, however, preapproval

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assisted project. UMTA has incorporated language in its grant contracts requiring equal employment opportunity by recipient public bodies and their contractors. (See UMTA Grant Contract, Part II, Terms and Conditions. (Sec. 110

[15] Given the nature of the questionnaires, it is unclear how the information will be integrated into the decisionmaking process. A problem with such an effort is that one inevitably concludes that the issue of whether to construct the project at all has already been decided, and that the only question remaining is specific location.

[16] See Exhibit, Civil Rights Analysis, Part A-Title VI Compliance Program, Capital Grant (draft 3/29/72). A similar exhibit relates to technical studies grants. Both exhibits appear in the present "Information for Applicants" pamphlet and will remain unchanged in the revised instructions.

[17] According to FHWA, "They constitute a determination as to whether the State is meeting its Title VI obligations after it has received some Federal-aid funds, and as to whether the State will meet its Title VI obligations as a condition to receiving further Federal-aid funds."

[18] FHWA's planning manual and procedures for conducting public hearings are replete with requirements for analyses of social and environmental factors. The 1970 Highway Act requires States to document that social and economic effects were duly considered at the public hearing. None of these administrative or legislative mandates refers specifically to civil rights impact, although a proposed amendment to a FHWA policy memorandum would assure consideration of a highway's impact on minority community cohesion, and a proposed equal housing regulation would require analysis by fund recipients of the highway's impact on housing. Revised OMB Circular A-95 gives public agencies charged with enforcing State and local civil rights laws the opportunity to *comment* on proposed projects, but adverse comments do not ensure that the project will be aborted or even modified. While the State highway departments are obligated to consider any adverse comments received through the A-95 clearinghouses, they may choose to ignore them. In unresolved issues, the State is required to submit a copy of the adverse comments and, if applicable, reasons for rejecting them. Because of the discretionary aspects of the A-95 process, it cannot be considered a reliable civil rights enforcement tool. It does not obviate the need for a structured Title VI preapproval mechanism within FHWA.

examination of a project by civil rights personnel. FHWA's perception of its role in preapproval reviews[19] stands in stark contrast to UMTA's newly implemented preapproval system, *infra*.

UMTA

UMTA performed 92 preapproval compliance reviews in Fiscal Year 1972.[20] An urban planner in the Special Programs Division of UMTA's Office of Civil Rights and Service Development (OCRSD) is responsible for checking all grant applications in terms of potential impact on minority communities.[21] Significantly, the Administrator of UMTA has given OCRSD signoff authority on all grant applications.[22] Although UMTA's preapproval program is a marked improvement, one individual certainly is not capable of reviewing each application indepth.

OCRSD has developed an application review checklist which already is being used, although it is in draft form. The checklist requires the reviewer to determine whether: (a) the application contains a map of the jurisdiction; (b) a Title VI assurance is included with the application; (c) the applicant has a relocation program; (d) sufficient demographic information is provided; (e) public hearings have been held; (f) minorities are represented on any citizen advisory boards; and (g) the environmental statement is included. Since the reviewer is required only to check "yes," "no," or "N/A" (not applicable) for each of the above and comment merely on all items checked "no," an overly simplistic treatment of these questions may result. [23] The checklist, is to be supplemented, however, by brief statements on how the project would affect minority areas and how residents of affected areas would be involved in the project.

Several aspects of the checklist and related procedures could be strengthened. There is a particular need to set forth specifically how the information will be analyzed.[24] For example, the reviewer checks the jurisdiction's maps to ascertain the potential impact of the project on the minority community. However, criteria have not been developed to define what constitutes a minority area, and applicants' maps designating minority areas usually are not verified. There is, therefore, considerable opportunity for the applicant to present misleading information.[25] Difficulties in refining UMTA's preapproval operation are directly attributable to lack of manpower. The person responsible for formulating more comprehensive review procedures is also the only person performing the actual reviews. This circumstance—coupled with the fact that some applications are difficult to analyze in civil rights terms without additional information [26]—has forced the reviewer to concentrate on projects exceeding $1 million.[27]

C. Postaward Reviews

DOT's Assistant Secretary for Administration recently established a program for audit coverage of DOT contracts and grants for compliance with civil rights requirements. This will mean that auditors will be involved, to a limited extent, in TitleVI enforcement.[28]

FHWA

After years of inaction in this field, FHWA has performed compliance reviews to determine whether State highway departments are complying with Title VI. In December 1971, the Secretary of Transportation instructed FHWA to draw up a program for Title VI compliance reviews within 15 days.[29] In a January 1972 response to the Secretary, the Federal Highway Administrator indicated that field work had been completed for five reviews and that 16 more would be completed by May. By August 1972, however, only nine reviews had been completed, and final evaluations had not been made on some of them.[30]

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[19] The Department of Justice (DOJ) recently made recommendations relating to FHWA's implementation of Title VI. A major feature was requiring a "Title VI Impact Statement" for all projects in which minority populations would be affected. All FHWA operating offices registered objections. Each office maintained that its current procedures covered most issues, and that if any changes were necessary they should be incorporated into the regular program procedures. Each FHWA office is reviewing the DOJ document against its current operating procedures to determine what should be modified to assure appropriate application of Title VI aspects.

[20] UMTA's July 1972 response to an OMB questionnaire, however, stated that no pre-grant reviews had been conducted in Fiscal Year 1972.

[21] The Special Programs Division is not involved in postaward reviews. These are handled by the External Programs Division.

[22] Applications, whether for technical studies or capital grants, are submitted in preliminary form. Typically, there is a 90-day period during which UMTA personnel, including civil rights staff, review the initial application and request additional information. After the requested information is submitted, the final application is prepared and distributed to UMTA personnel for approval or disapproval.

[23] Comments may be made regarding affirmative responses. But if no comments are made, a simple "yes" check, for example, to the item relating to relocation is not instructive.

[24] This would demand that applicants be adequately informed of what is required of them. An External Operating Manual, written for applicants, sponsors, and the general public, contains some information relating to Title VI.

[25] There also is a need for the reviewer to collect supplemental information, such as adverse civil rights comments elicited through the A-95 process.

[26] When a civil rights problem is identified in the application, the staff usually alerts the Transportation Representative (TR), who is the liaison person with the prospective grantees. The TR typically is asked to resolve problems or collect additional information. If the TR were unable to resolve the matter, the reviewer would make an onsite visit, but none has been made to date.

[27] This does not mean that all grant applications are not subject to some type of preaward review. It means, rather, that the depth of the review corresponds directly to the proposed level of funding.

[28] The audit work is not intended to replace or duplicate indepth compliance reviews by civil rights personnel or any reviews in the civil rights field by other personnel. Rather, the objective is to perform limited civil rights checks of DOT contrators and grantees as a basis for advising responsible officials of any indications of noncompliance.It will be some time before the value of including civil rights matters in the external audit process, on a selected basis, will be apparent.

[29] A draft procedure for performing Title VI reviews was circulated in September 1971. The intent was that reviews be conducted with these interim guidelines and that final guidelines be based on the initial experience.

The first two reviews examined by this Commission's staff—Oklahoma and Connecticut—contain deficiencies characteristic of first efforts in unfamiliar subject areas. The guidelines outline general aspects of the State's highway program to which the review team's attention should be directed initially: contract award procedures; formulation of long-range highway plans; relocation assistance; right-of-way acquisition and property management; minority persons interviewed regarding equal benefits and participation in the development and construction of highways; and State highway department employment practices. Only two of these broad areas—internal employment [31] and minority interviews—were treated extensively in the Oklahoma review. Otherwise, the review report was characterized by a lack of indepth consideration of the issues.[32]

Other reviews [33] examined by Commission staff went significantly deeper. The treatment of issues nevertheless varied substantially, reflecting a need for considerable refinement of the guidelines to make sure all reviews are comprehensive and uniform.[34]

Reviews are conducted by FHWA regional staff, general coordination and guidance being supplied by the regional civil rights offices. Specific aspects of a review often are done by the regional program personnel with expertise in the subject being reviewed.[35] In such cases, the regional civil rights staff is not likely to be directly involved. Consequently, the civil rights staff may not develop a working knowledge of program operations.[36]

UMTA

UMTA reports that its civil rights staff performed 120 postaward reviews during Fiscal Year 1972. Combined with preapproval reviews, this added up to 212 reviews of UMTA's 566 recipients. Reviews submitted by UMTA continue to suggest that scant attention is paid to Title VI in postaward reviews,[37] although there are some signs of improvement. Even where Title VI matters were considered, there often was inadequate documentation.[38] UMTA's Title VI Manual states that the compliance investigator "should ride busses and rapid transit cars over various routes to determine if there is a difference in service and benefits. . . ."

D. Complaint Investigations

The handling of civil rights investigations and conciliation continues to be centralized in the Department's Office of Civil Rights. Thirteen complaints involving Title VI were received in Fiscal Year 1972, and five involved highway programs. Three of the highway related complaints had been received in the latter months of 1971 but had not been resolved as of August 1972.[39]

E. Monitoring of Field Activities

FHWA's headquarters Office of Civil Rights monitors the Title VI reviews conducted by FHWA regional and division (field) personnel by evaluating their review reports. On two occasions, a headquarters representative participated in the reviews. Since field personnel have not previously been involved in Title VI reviews, it would be beneficial if headquarters personnel increased their participation in such onsite monitoring activities.[40]

IV. ENFORCEMENT ACTIONS

Only three of DOT's more than 2,000 recipients [41] were found to be in noncompliance during Fiscal

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[30] FHWA reports that 14 other Title VI reviews have been completed, but the reports have not yet been received by the headquarters OCR-FHWA. FHWA says reviews of all 52 recipients will be completed by the end of Fiscal Year 1973.

[31] This generally is not a Title VI issue. Further, the Oklahoma report discussed in elaborate detail the State department's organization, classification and compensation plans, benefits programs, etc., but failed to provide any information on the numbers of minorities in the department beyond the statement that the "Oklahoma Highway Department Internal EEO Program was . . . found to be satisfactory in the majority of areas." Even the section dealing with interviews of minorities dealt almost exclusively with the topic of internal employment.

[32] This is evident, for example, in the discussion of whether highway planning and research consultants complied with the nondiscrimination clauses of their contracts. The review team conceded in its evaluation that no formal attempt to determine compliance had been made, but it nevertheless asserted that "normal contacts with consultants and knowledge of their operations show no violations or complaints." Generally, the Oklahoma review was not particularly responsive to guideline questions. The review team rarely alluded to specific projects or provided statistical foundations for conclusions. The review often detailed how things *should* be done, rather than how they *were* done. Deficiencies in the Oklahoma review resulted in a letter from FHWA to the regional administrator, recommending that the review team supply missing information or perform another review.

[33] Connecticut, Massachusetts, Michigan and North Carolina.

[34] In July 1972, a special assistant to the Director of FHWA's Office of Civil Rights was hired. His primary responsibility is evaluating all field reviews and developing, in final form, definitive review guidelines.

[35] For example, a review of right-of-way policies and practices in one State was performed by the regional appraiser and the division right-of-way officer.

[36] FHWA notes that program officials who conduct reviews are thoroughly briefed and instructed by the professional civil rights staff.

[37] Most of the reviews were devoted to consideration of employment matters.

[38] In one review, an NAACP spokesman said he had heard no complaints from minorities concerning transit service. This was corroborated only be a member of the Model Cities Advisory Board and employees of the sponsor. The reviewer discussed allocation of *new* buses between predominately minority and majority areas with the sponsor's director of transit, but he failed to check all routings and schedulings against maps showing racial concentrations.

In another review, one person alleged that minority contractors were excluded from the sponsor's construction project (a Title VI matter), but there was no apparent attempt to substantiate his charge. In still another review, some community contacts and employees alleged a disparity in services. The reviewer found that equitable transit service had not been provided. Considerable attention was paid to a pilot project which primarily served a mostly white clientele (i.e., provided bus lane service from a predominantly white suburban area to the downtown area). However, the recommendation was simply that the civil rights staff be involved in the sponsor's next project application.

[39] One complaint, received in October 1971, was investigated, and it was recommended that additional hearings be conducted. However, a full report had not been prepared as of August 1972. Both of the other complaints, received in November and December 1971, were still awaiting investigation as of August 1972.

[40] UMTA's civil rights operations are totally centralized.

Year 1972.[42] No administrative or judicial action was initiated.

V. ORGANIZATION AND STAFFING

FHWA

A recently appointed special assistant of FHWA's Director of Civil Rights will devote full time to Title VI and Title VIII matters. FHWA's OCR has 35 full-time professional positions—14 at headquarters and 21 in the field. This is a decrease since April 1971.[43] Only three of the 35 devote more than 50 percent of their time to Title VI matters, and none of the three is a regional civil rights specialist.[44] While FHWA intends to allocate additional resources to Title VI enforcement, even the anticipated levels fall short of what is necessary.[45]

UMTA

The full-time professional civil rights staff numbers 10, and only one devotes more than halftime to Title VI.[46] Within UMTA's Office of Civil Rights and Service Development is the urban planner, previously mentioned, who has full-time responsibilities for Title VI preapproval reviews. Given the nature of the assigned responsibilities (see discussion *supra*), it is impossible for one person to fulfill them adequately. There should be a substantial increase in the number of persons assigned this preaward responsibility.

The External Programs Division has primary responsibility for Title VI enforcement efforts other than pre-approval reviews. Some personnel in the Division are involved, in varying degrees, in Title VI activities, but their involvement seems minimal.[47] There does not seem to be much hope for immediate relief, since UMTA has recently experienced a drastic reduction in staffing—a retrenchment that has affected both program and civil rights operations.[48]

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[41] The 2,000 grantees include all recipients of assistance from the Coast Guard Federal Aviation Administration, and National Highway Traffic Safety Administration, as well as from FHWA and UMTA.

[42] The small number probably is a function of the relatively small number of reviews conducted during Fiscal Year 1972. Two of the instances of noncompliance were found in the programs of FAA recipients. The other related to a UMTA recipient.

[43] At that time FHWA had a full-time professional civil rights staff of 38, with four additional positions authorized.

[44] FHWA reports 4.2 man-years spent on Title VI in Fiscal Year 1972—0.5 by headquarters staff and 3.7 by regional personnel. It is expected that 11 man-years will be devoted to Title VI in Fiscal Year 1973. FHWA has identified several Title VI areas, such as the Federal-aid research and development program, which have received minimal or no attention because of lack of personpower.

[45] FHWA's appropriation for civil rights enforcement exceeded $1 million in Fiscal Year 1973. The portion allocated to Title VI enforcement was slightly more than $71,000, or abbut 7 percent. It is expected that the civil rights appropriation will rise to almost $1.3 million in Fiscal Year 1973 and that the portion allocated to Title VI will increase to about $220,000. The Title VI allocation still represents only 17 percent of the total.

[46] In Fiscal Year 1972, 4.8 man-years were spent on Title VI. This is expected to increase to 6.1 in Fiscal Year 1973.

[47] Although these individuals perform postaward reviews, coverage of Title VI aspects of these reviews remains somewhat superficial. (See discussion *supra.*) The Urban Mass Transportation Administrator, in a December 1971 memorandum to the Secretary of Transportation, indicated that UMTA's OCR had four professionals involved on a day-to-day basis with Title VI and Executive Order 11246. Conceding that UMTA's compliance program had been oriented mainly toward Executive order matters, the Administrator initiated a program aimed at increasing emphasis on Title VI (including a doubling of Title VI compliance reviews).

[48] Even after OMB had approved the Fiscal Year 1972 staffing level, a substantial number of positions were cut. Matters were not materially improved in Fiscal Year 1973, when less than 10 new positions were requested for the entire agency.

REGULATORY AGENCIES

Civil Aeronautics Board (CAB)
Federal Communications Commission (FCC)
Federal Power Commission (FPC)
Interstate Commerce Commission (ICC)
Securities and Exchange Commission (SEC)

I. OVERVIEW

Despite their potentially significant role in combating racial and ethnic discrimination, CAB, FCC, FPC, and ICC continue to deny the full scope of their civil rights responsibilities. Except for FCC, which prohibits employment discrimination by broadcasters and telephone and telegraph companies, the agencies accept no responsibility for the equal employment posture of their regulatees. Although FCC has taken a leadership role in this area and has required its regulatees to submit racial and ethnic data and affirmative action plans, it does not strictly enforce its rules.

FCC requires that broadcast programming meet minority needs. FPC has created a program for ensuring nondiscrimination in the facilities and services of its regulatees. CAB and ICC have not, although they have legal responsibility to ensure nondiscrimination. ICC limits its actions in this field to complaint processing.

FPC's actions are limited to reviewing hydroelectric project recreational facilities. These reviews continue to be narrow in scope and lacking in quality. FPC has yet to provide sufficient instruction to field staff for meaningful completion of these reviews. FPC does more intensive reviews in four facilities located near areas of minority concentration, but it is too early to predict what their quality will be and what followup actions will be taken.

None of the agencies has determined that it has authority to provide free legal services to those who wish to challenge regulatory actions but are financially unable to do so.

With the exception of the FPC reviews and certain FCC activities, such as data collection and review of affirmative action plans, mechanisms for civil rights enforcement are almost totally lacking in the regulatory agencies. There are no civil rights offices, or even full-time staffs. In fact, only CAB has made a permanent civil rights assignment even on a part-time basis.

SEC has taken two actions of potential significance. One is a proposal that would broaden the disclosure of civil rights proceedings affecting a company's economic position. (At the same time, it must be noted that SEC has not even sufficiently monitored its present requirement for such disclosures).

Secondly, SEC has removed its prohibition on stockholders' questions relating to racial issues. It is too early to tell if its new requirement—that only questions pertinent to the stock issue be asked—will be used to provide greater latitude to stockholders in making inquiries about the civil rights activities of a company.

The civil rights performance of the regulatory agencies ranges from satisfactory to grossly inadequate. FPC's failure to acknowledge that it has certain civil rights responsibilities is totally unjustifiable. Although CAB and ICC have initiated the first step prohibiting employment discrimination by regulatees, they have inexcusably prolonged making decisions in this regard. FCC and SEC have willingly acknowledged responsibilities and have taken steps to fulfill them. Their enforcement efforts, however, need to be expanded.

II. RESPONSIBILITIES

The Civil Aeronautics Board (CAB), the Federal Communications Commission (FCC), the Federal Power Commission (FPC), the Interstate Commerce Commission (ICC), and the Securities and Exchange Commission (SEC) were created to oversee certain major commercial activities of special public import.[1]

In most cases these regulatory agencies have no assigned civil rights responsibilities.[2] Nevertheless, the regulatory process exerts a powerful influence upon the regulated industries. In the light of the intent of the various civil rights laws to provide equal opportunity to minority citizens, the process should be used to see that the regulated industries make every effort toward that goal.

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[1] CAB regulates the air transportation industry. FCC licenses and regulates radio and television broadcasters and telephone and telegraph companies. FPC licenses hydroelectric plants and regulates gas and electric companies. ICC licenses and regulates rail and motor carriers. SEC administers several statutes dealing with securities, all of which were enacted for the protection of investors.

[2] One exception is CAB's mandate to uphold the prohibition against discrimination in Title VI of the Civil Rights Act of 1964 with regard to federally subsidized air carriers.

III. CIVIL RIGHTS ACTIVITIES OF CAB, FCC, FPC, AND ICC

A. Oversight of Employment Discrimination by Regulatees

A major area in which CAB, FCC, FPC, and ICC can be effective is that of ensuring nondiscrimination in employment practices of regulatees and permittees. Currently, although these industries are an important source of jobs, minority group members are grossly underrepresented in them.[3]

1. CAB

On August 2, 1972, CAB issued an advance notice of a proposed rulemaking[4] to determine whether it has authority (a) to ensure that air carriers follow nondiscriminatory employment practices, and (b) to issue rules regulating employment practices.[5]

2. FCC

FCC is the only regulatory agency which has assumed responsibility for prohibiting employment discrimination by its regulatees.[6] In 1971 it issued rules for prohibiting employment discrimination by broadcasters and telephone and telegraph companies. In March 1972 it extended the rules to cable television permittees.

FCC requires its licensees and permittees[7] to file an annual employment report showing the race and ethnic origin of their employees, by job category. FCC states that most broadcasters and common carriers have complied with the requirement, although an undetermined number of broadcasters have been sent letters pointing out that they had not submitted reports.[8] Such letters alone cannot enforce reporting requirements, FCC apparently plans no further steps until the delinquent party's license or permit is due to be renewed.

FCC is beginning a comparison of 1971 and 1972 employment data for signs of underutilization of minority employees. In such cases, FCC plans to request an explanation and require a firm commitment to employment goals and timetables.

Applicants for construction permits, transfers of control, and license renewals are required to file an affirmative action plan for equal employment opportunity. FCC's specifications for these plans, while mandatory, are weaker than minimum standards for affirmative action plans of Federal contractors, as outlined by the Office of Federal Contract Compliance (OFCC) in Revised Order No. 4.[9] FCC does not maintain comprehensive records on compliance with this requirement or on the adequacy of the plans submitted.[10]

FCC has reviewed these plans in conjunction with employment data only in processing license renewals in two States.[11] These reviews resulted in a request to 30 stations for additional information.[12]

3. FPC

FPC has held consistently that employment discrimination by its regulatees is outside its jurisdiction. It recently denied a request by the National Association for the Advancement of Colored People and 11 other public-interest organizations for a general rulemaking action directed at promulgating regulations for equal employment opportunity on the part of its regulatees.[13] FPC currently is considering an appeal to its belief that it lacks jurisdiction.[14] The Department of Justice stated in 1971 that FPC has clear authority to bar employment discrimination by many of its regulatees. The House Civil Rights Oversight Subcommittee recently found that FPC has "failed to fulfill its constitutional and statutory responsibilities with respect to ensuring equal employment opportunities in companies which it regulates.[15]

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[3] For example, one-third of all gas and electric companies have no black employers whatsoever. In the public utilities only 6.1 percent of the employees are black and 1.6 percent Spanish speaking. See testimony of William H. Brown, Chairman of the Equal Employment Opportunity Commission (EEOC), in a Sept. 12, 1972, report from the House of Representatives' Judiciary Committee, entitled "The Civil Rights Responsibilities of the Federal Power Commission."

[4] By issuing an advance notice of a proposed rulemaking, CAB has introduced an additional and time-consuming step into the rulemaking process. The process ordinarily begins with the issuance of a proposed rule in the *Federal Register*. The advance notice solicits comments, which are due by Sept. 25, 1972. After considering the comments, CAB will decide whether to issue a rule. The added step may greatly delay final promulgation of a rule. This additional step is unusual because the questions to be considered are basically legal. It opens for public comment questions which would appropriately be decided by an agency's own counsel.

[5] As CAB notes, both this Commission and the Equal Employment Opportunity Commission have indicated general confidence that such authority and responsibility rests with the CAB. The Board, however, is undecided on whether the employment practices of air carriers are a valid public interest matter. If they are, the Board then would have no doubt about its authority to act.

[6] The Chairman, Dean Burch, has asked Commissioner Benjamin Hooks to analyze the problems in evaluation of licensee performance and equal employment opportunity procedures. Commissioner Hooks also was asked to suggest solutions such as creation of an equal employment opportunity office within FCC.

[7] This applies only to licensees and permittees of broadcast stations with five or more full-time employees and to common carrier (telephone and telegraph) licensees and permittees with 16 or more employees. Cable television stations with five or more employees were added in 1972.

[8] Although the reports were to be submitted by May 31, 1972, and most were received in June, FCC is still assessing common carrier compliance.

[9] FCC reports that whenever possible OFCC standards are provided to FCC regulatees for guidance.

[10] For example, FCC has no record of the number of specific instances in which plans were not submitted in conjunction with applications for transfers of control. Nor do records show the number of inadequate plans which had to be amended.

[11] Pennsylvania and Delaware.

[12] FCC plans to evaluate the reporting requirements to determine whether revisions are necessary.

[13] FPC notes that the Federal Power Act and the National Gas Act, from both of which it derives its authority, were founded on economic principles, with the primary purpose of assuring adequate service and just and reasonable prices for consumers of gas and electricity. This is a limited concept of FPC jurisdiction. But even with this interpretation, FPC should acknowledge concern for nondiscrimination in regulatees' employment practices to the extent that the practices affect the services provided. FPC also maintains that such a rulemaking would usurp the authority of other Federal agencies. Presumably, it refers to the Equal Employment Opportunity Commission and the Office of Federal Contract Compliance. In both cases, it may be many years before the impact of these agencies brings about equal opportunity in power companies or any other industry. Unless FPC takes positive action toward equal opportunity in its regulatees' employment, it will be given tacit approval to their poor overall record in minority employment.

[14] Should it determine that it has authority, FPC asserts, equal employment regulations will be made a top priority item.

4. ICC

In May 1971, ICC instituted a rulemaking proceeding [16] to ascertain its authority to regulate nondiscrimination in the employment practices of its licensees. More than 16 months [17] have passed, and ICC still has not determined the scope of its jurisdiction. Until ICC decides that it has jurisdiction, it plans no action regarding equal employment practices of its regulatees.

B. Discrimination in the Provision of Services by Regulatees

1. CAB

Discrimination in air carrier services is prohibited by the Federal Aviation Act of 1938. Further, Title VI of the Civil Rights Act of 1964 prohibits any federally subsidized carrier [18] from engaging in discriminatory practices against its users.[19]

The Board does not believe, however, that discrimination in air carrier services is a significant problem. It has no plans, therefore, to adopt regulations establishing affirmative mechanisms to assure nondiscrimination in air carrier services and facilities. [20] The Board's confidence that no action is necessary is based upon nothing stronger than the absence of complaints.[21]

2. FCC

FCC is prohibited by statute from censoring program material and does not, therefore, normally investigate allegations of religious or racial criticism, ridicule, or humor. FCC requires that programming be responsive to community needs, including those of minority groups. When license holders come to FCC for renewal [22] they must prove they are serving those needs. In a 1968 Public Notice, FCC listed the steps which must be taken by broadcast applicants.[23]

3. FPC

Of the regulatory agencies discussed here, FPC continues to be the only one to adopt an affirmative program to ensure nondiscriminatory utilization of facilities provided by its regulatees. FPC regularly inspects all licensed recreational facilities at hydroelectric projects.

As a result of these investigations, FPC has determined that in the West Coast, Northeast, and North Central areas minority group members were less than one percent of the users of such facilities.[24] Despite this underrepresentation, FPC has not indicated what action, if any, it will take.

FPC's field staff continues to make observations only during the week and are not instructed to interview local minority group and civil rights leaders in connection with their reviews. Despite these deficiencies, no new instructions have been issued to cover routine inspections.

Somewhat better instructions have been issued for a series of intensive reviews scheduled for four facilities located near large minority populations. Each facility is to be visited seven times during the recreation season, and three of those visits are to occur on weekends or holidays. Again, however, the reviewers are not encouraged to seek the special information that can best be obtained from the minority community.[25]

4. ICC

ICC's activities for preventing nondiscrimination in its regulatees' services continue to be limited to processing complaints.

C. Complaint Processing and Investigation

1. CAB

CAB has received four complaints since October 1971 alleging discrimination in services and facilities.

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[15] *Civil Rights Responsibilities of the Federal Power Commission*, A report of the Civil Rights Oversight Subcommittee of the House Committee on the Judiciary, 92d Cong., 2d Sess., September 1972.

[16] Instituting a proposed rulemaking proceeding is similar to issuing advance notice of a proposed rulemaking. It introduces an additional step, greatly delaying final promulgation of the rule.

[17] Comments were required by late 1971 and early 1972.

[18] Subsidized carriers are local airlines, such as Allegheny and Ozark, and some Alaskan carriers. They account for under 10 percent of commercial domestic air traffic.

[19] A proposed amendment to the Title VI regulations, currently awaiting Presidential approval, would prohibit discriminatory employment practices by subsidized carriers to the extent necessary to ensure nondiscriminatory treatment of passengers and shippers of those carriers.

[20] The Board does not require, for example, that carriers make provisions for non-English speaking Americans on domestic flights. It does not issue guidelines for the use of bilingual airline staff or publication of multilingual schedules and other written instructions.

[21] See the U.S. Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort* 1970, at 231-32 and 286, for a discussion of the difficulties of inferring nondiscrimination from an absence of complaints.

[22] Broadcast licenses usually run for three years.

[23] These four steps are as follows: (a) consultations with community leaders to ascertain community needs; (b) a listing of significant suggestions on community needs; (c) evaluation of the relative importance of the suggestions and consideration of them in formulating program service; and (d) relationship of program service to community needs. Federal Communications Commission, Public Notice, Aug. 22, 1968.

[24] In four areas of heavy minority concentration—in Maryland, North Carolina, Alabama, and Oklahoma—initial surveys, to be followed by more intensive review, showed that minority usage varied from 5 to 29 percent.

[25] Such information includes the feeling of minorities about use of the facilities and the presence of subtle discriminatory barriers.

The complaints were referred to CAB's Bureau of Enforcement for investigation. Three were handled by correspondence. In one case, because the allegation was serious and formal action might be required, a field investigation was conducted. No complaint resulted in a finding of discrimination, although one still is pending.

The paucity of civil rights complaints received by CAB may result, in part, from lack of public information about the Board's duties and responsibilities to act upon such complaints. The Board issues a monthly press release on the number of complaints received, by category. It takes no special steps to see that this information reaches the minority community, but it considers this publicity to be sufficient to encourage minorities to file complaints.[26]

The Board does not require air carriers to post prominent notices promising adequate services for all racial and ethnic groups and giving information on filing a complaint. CAB continues to believe optimistically that the airline industry has an "excellent record" and is "remarkably free of discrimination."

2. FCC

Between October 1, 1971, and July 1, 1972, FCC received 82 complaints regarding employment discrimination by broadcast licensees.[27] It handled these complaints in a variety of ways,[28] but for the most part they were forwarded to licensees with requests for explanations. The complainants were then informed of the explanations and given an opportunity to comment. If the licensee's response appeared *prima facie* to answer the complainant's charge satisfactorily and the complainant failed to take issue with it, no further action was taken.

Such a process might well be intimidating to the complainants.[29] In all, only two complaints resulted in field investigations,[30] and it is not surprising that there were no findings of discrimination. The net effect is a weak complaint processing program which cannot convince the regulatees that FCC intends to enforce its nondiscrimination requirements.

Since October 1971, FCC also has received over 50 formal petitions to deny license renewals to approximately 75 radio and television stations accused of discriminatory employment practices. All of these renewals are listed by FCC as "pending."

A major FCC activity in this field is related to charges of discrimination in Bell Telephone System employment. EEOC and other parties intervened in an FCC ratemaking procedure, alleging such discrimination. As a result, FCC commenced proceedings against the Bell Telephone System. In August 1972, the proceedings were still in the hearing stage.[31] Written testimony was to be filed in August and oral examination of Bell Telephone System witnesses was scheduled for September.

Between November 1, 1971, and July 1, 1972, FCC received 240 complaints about racial, ethnic and religious humor, ridicule, and criticism in broadcasting, and 62 complaints of inadequate programming for minorities. FCC states that it lacks manpower to trace the handling of these complaints. It does not know how many were handled by field investigation, how many by correspondence, how many resulted in findings of discrimination, and what steps were taken when discrimination was found. Manpower limitations notwithstanding, the unavailability of such information can only be damaging to enforcement of nondiscrimination in programming. Information about findings of discrimination would be especially useful for guiding broadcasters in creating programs to meet minority needs.

3. FPC and ICC

FPC has received no new complaints during the past year alleging discrimination at recreational facilities located at hydroelectric projects.[32]

ICC does not maintain any record of complaints alleging employment discrimination by its licensees, but it believes there have been few.[33] In the past year it has received seven complaints alleging discrimination in services or facilities subject to ICC jurisdiction. Six complaints were investigated by field staff and were closed with no findings of discrimination.[34] In three of those cases violations "could have occurred," ICC reports, but there was insufficient information to warrant enforcement action.

Neither agency has taken steps to encourage the filing of complaints of discrimination in the regulatees' services, facilities, or employment practices.

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[26] The Board notes that it receives thousands of consumer complaints annually.

[27] FCC did not indicate how many complaints against common carriers (telephone and telegraph companies) were received. It processed "about 20" through correspondence and forwarded "about six" to EEOC. FCC stated that it received "numerous informal" complaints.

[28] Five of the complaints, involving stations with 25 or more employees, were sent to EEOC, and EEOC has not yet provided FCC with information on their status. FCC has apparently taken no further action on these complaints, even to the extent of requesting a status report from EEOC. Forty-six complaints were handled by FCC's Complaints and Compliance Division, and 17 were processed by the Renewal and Transfer Division. The remainder were handled through other FCC channels.

[29] The process appears to offer little protection to any employee discriminated against by an employer who can offer "plausible" explanations. It offers no protection from reprisal.

[30] FCC reports that limited staff makes field investigations almost impossible.

[31] Hearings have been held in Washington, New York, Los Angeles, and San Francisco, extending to some 35 hearing days.

[32] In two complaints received prior to Oct. 1, 1971, FPC has taken action to arrive at resolutions acceptable to the complainants.

[33] Such complaints would be received by ICC field offices, as well as by the Washington office. All are referred directly to EEOC. Field offices send a copy of the referral letter to the complainant, but no copy is sent to ICC's Washington office.

D. Challenges to Agency Actions

On December 7, 1971, the Administrative Conference of the United States urged agencies to take steps to minimize the cost of public participation in agency hearings. Regulatory agencies often provide advice to interested parties concerning agency rules, published guidelines, and related matters. They do not, however, provide free legal counsel to assist challenges to their actions by those who lack the financial means to do so. In general, the regulatory agencies themselves lack the funds to provide such services.

CAB contends that because the average individual lacks the necessary expertise, regulatory matters do not lend themselves to participation by individuals in the general public.[35] This position ignores the fact that legal counsel might contribute to the expertise.[36] CAB further argues that groups well-versed in the intricacies of Board proceedings are not in need of such counsel.

FCC has considered the question of its authority to provide legal services and has concluded that such services are not among its proper functions. FPC has maintained continuously that it lacks authority to provide free counsel. ICC has deliberated the issue for more than 18 months and has reached no conclusion. This is an inordinate amount of time and raises a question about ICC's good faith in this area.

E. Minority Entrepreneurship

Some of the industries over which FCC and ICC have jurisdiction—i.e., radio, television, and motor carrier industries—offer substantial opportunities.[37] Neither of these agencies, however, has taken steps to compensate for the institutional barriers to minority entrance into these industries. The agencies have not taken, for example, steps to amend licensing procedures to facilitate minority entrance.

ICC states that it currently treats all licensees with "equality and impartiality," but modifications of its licensing procedures are under consideration. A proposed amendment to the Interstate Commerce Act contains provisions designed to remove traditional barriers which were conceived solely to protect existing carriers.[38] The amendment is pending in Congress.

IV. CIVIL RIGHTS ACTIVITIES OF SEC

A. Public Disclosure by Stock Companies of Legal Proceedings Involving Charges of Discrimination

In July 1971, SEC issued a requirement that registering companies [39] disclose to SEC any proceeding relating to civil rights that affects 15 percent or more of a company's assets. SEC now proposes to reduce the figure to 10 percent—a step that would increase the number of disclosures required.

But even at the present level of required disclosure, monitoring of this requirement is inadequate. SEC notes that some statements have been filed[40] and that "a number of registrants" have supplied supplementary information.[41] SEC, however, does not check to determine if companies which come within the requirement have filed the appropriate statements. Where a supplemental statement indicates that civil rights matters were omitted from the filing because the registrant deemed them immaterial, SEC reviews the information to determine whether all ramifications of the proceedings were, in fact, immaterial.

SEC has not kept a record of the number of disclosures under this requirement, but it has proposed that records be maintained for the coming fiscal year. Despite its incomplete information about compliance, SEC believes closer monitoring is not necessary because the present approach "appears to be working satisfactorily."

Nonetheless, it would be useful if the SEC requested the Department of Justice, the Equal Opportunity Commission, and the Office of Federal Contract Compliance to provide it with an up-to-date list of companies against whom proceedings have been brought. It should be understood, at the same time, that the great bulk of litigation involving employment discrimination is brought by private parties, and not by Federal agencies. Contact also should be established, therefore, with such organizations as the NAACP Legal Defense and Education Fund, Inc., and the Mexican American Legal Defense and Education Fund.

B. Proxy Request Relating to Civil Rights

SEC has revised its rules governing the subject matter for stockholders' proxy proposals. The rules previously barred stockholders from raising general, economic, political, racial, religious, or social questions. The revised rules bar only those questions which are

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[34] The seventh is still in the investigation stage.

[35] CAB cites the fact that the Board's Rule 14 permits "any person" to appear at a hearing, present evidence, cross-examine, and present a written statement, but few individual members of the public do so.

[36] For example, legal counsel might advise individuals about using Rule 14.

[37] Entry into these fields does not require vast capital investments, and they therefore continuously provide new opportunities. Because of the nature of the industries they regulate, CAB and FPC do not appear to have much opportunity to facilitate minority ownership.

[38] Under present entry standards, existing license holders enjoy a virtual monopoly in the surface transportation field.

[39] During Fiscal Year 1972, over 3,300 companies registered with SEC.

[40] The number of disclosures is not substantial when measured against the number of SEC registrations.

[41] Supplementary information is required when a civil rights proceeding affects less than 15 percent of the company's assets.

not significantly related to the stock issue or within the control of the company. This change should permit stockholders to raise pertinent civil rights questions—including participation in affirmative action plans and minority entrepreneurship programs.

V. ORGANIZATION AND STAFFING

Civil rights staffing in all five agencies is totally inadequate. None of the agencies has made full-time staff assignments to monitor discrimination in the employment, services, or facilities of the industries they regulate. Even where certain civil rights responsibilities have been identified, none of the agencies offers special training for the staff members executing those responsibilities. No agency has special staff for handling civil rights complaints even where, as the case of FCC, the number is substantial.

At CAB there is only one person with civil rights responsibilities, and that is on a part-time basis.[42] CAB does indicate that the results of its advance notice for a proposed rulemaking may have some bearing on its civil rights staffing.

FCC has no personnel with primary responsibilities in these areas. Oversight of equal employment opportunity by regulatees is the responsibility of personnel in charge of licensing qualifications. FCC has not developed the necessary staff resources to assess the statistical employment reports and affirmative action plans it receives.

In view of the substantial civil rights responsibilities of FCC, it is incumbent upon that agency to create a civil rights office. A full-time, high-level staff person should be appointed to see that FCC fulfills all its civil rights functions. That official would be concerned with the employment practices of licensees, as well as with discrimination in providing services.[43] Until the FCC staff demonstrates an ability to carry out FCC's civil rights mandates adequately, several full-time staff members should be assigned to this person's office.

FPC's regional offices take responsibility for investigating nondiscrimination at recreational facilities. No other FPC staff members have permanent assignments for ensuring nondiscrimination by regulatees, even on a part-time basis.[44]

At present, no ICC officials are assigned formal civil rights responsibilities. Any civil rights complaints are investigated by field offices. ICC has indicated that it will review its manpower needs after it makes a final determination of its civil rights responsibilities.

SEC has no civil rights staff and no plans to create full- or part-time positions for this purpose.

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[42] This person has responsibility for activities related to ensuring nondiscrimination by subsidized air carriers.

[43] For example, that individual might check a sample of community surveys filed by broadcasters in areas of minority concentration to ensure that the opinions of minority community leaders were solicited.

[44] FPC has an equal employment opportunity officer who devotes full-time to FPC personnel problems. The responsibilities of this position do not extend to regulatees.

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